BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

In the Matter of:

ADMINISTRATIVE ORDER ON CONSENT

City of Richmond 900 East Broad Street Richmond, Virginia

Docket No. CWA-03-2014-0047 DN

Respondent.

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

The following findings are made and this Administrative Order on Consent (Consent Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

II. FINDINGS of FACT, CONCLUSIONS OF LAW and FINDINGS OF VIOLATION

1. Section 301(a) of the Act, 33 U.S.C. § 1311, prohibits the discharge of any pollutant by any person from a point source to navigable waters except in compliance with, among other things, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

- 2. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants or may authorize states to issue such permits.
- 3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
- 4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), provides that discharges from a municipal separate storm sewer system (MS4) and storm water discharges associated with industrial activity may be subject to NPDES permitting requirements.
- 5. Pursuant to 40 C.F.R. §122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
- 6. The City of Richmond, Virginia (Richmond or Respondent) is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
- 7. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).
- 8. The term "municipal separate storm sewer system" or "MS4" includes, *inter alia*, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
- 9. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as 'large' or 'medium' municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16).
- 10. Pursuant to 40 C.F.R. §122.32(a)(1), the Virginia Department of Conservation and Recreation ("VADCR" or "the Department") has determined that Richmond is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit

- 11. Therefore, Richmond is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).
- 12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975. In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 13. On July 9, 2008, VADCR issued a General NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems a/k/a Authorization to Discharge (MS4 Permit) to Richmond. The Permit is scheduled to expire on July 8, 2013,
- 14. The MS4 Permit authorizes discharges of storm water from Respondent's MS4 to waters of the Commonwealth of Virginia with exceptions that are not relevant here.
- 15. Section II B. 6. of the MS4 Permit requires the City to "Develop and implement and operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.... [T]he program shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance...
- 16. Section II.B. 6. of the MS4 Permit also provides that: "The operator shall identify and implement, evaluate and modify as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:...d. materials that are soluble or erodible shall be protected from exposure to precipitation....".
- 17. The City's MS4 Program Plan in Section 6.2 states "DPU will implement an employee training program for operations staff involved with vehicle maintenance and field activities that may impact the MS4."
- 18. Storm water discharges associated with industrial activity are required to be authorized by either the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Storm Water Discharges Associated with Industrial Activity (General VPDES Stormwater Industrial Permit), or by an individual VPDES permit for storm water discharge associated with industrial activity.
- 19. "Storm water discharges associated with industrial activity" is defined at 40 C.F. R. § 122.26(b)(14) and 9VAC25-151-10 and includes "Landfills, land application sites and open dumps that receive or have received any industrial wastes..." and "Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations or airport deicing operations..."

- 20. On January 23 and 24, 2012 representatives of EPA conducted an inspection of Richmond's MS4 program implementation. The inspection included, among other things, site visits to the Richmond Department of Public Works Hopkins Road Facility and East Richmond Landfill Facility.
- 21. At the time of the inspection, the Hopkins Road Facility was classified under Standard Industrial Classification Code 4173 and had a vehicle maintenance shop. At the time of inspection the Respondent did not have industrial stormwater permit coverage for its Hopkins Road facility.
- 22. The East Richmond Landfill Road Facility is an inactive landfill that has accepted industrial waste. At the time of inspection the Respondent did not have active industrial stormwater coverage for its East Richmond Landfill facility, although the facility had previously been covered by an industrial storm water permit.
- 23. At the time of the inspection, soluble and erodible materials were observed exposed to precipitation events, at the Hopkins Road facility. Diesel fuel containers were observed without secondary containment, visible sheens were seen adjacent to storm drain inlets, road sands were stored in a partially uncovered area and white goods were stored on the ground surface without containment.
- 24. At the time of the inspection, soluble and erodible materials were observed exposed to precipitation at the East Richmond Road Facility. Diesel fuel drums with evidence of leaking were observed without secondary containment and drums containing unknown substances were observed spilling substances onto the ground without secondary containment.
- 25. At the time of inspection, the Respondent had not developed a formal pollution prevention and good housekeeping training program for its employees that includes a curriculum and set frequencies or performance goals for training activities.
- 26. Respondent's failure to have industrial stormwater permit coverage for the Hopkins Road and East Richmond Landfill facilities is a violation of Section 301 of the Act, 33 U.S.C. § 1311.
- 27. Respondent's failures: 1) to protect soluble and erodible materials and the Hopkins Road and East Richmond Road Landfill facilities from exposure to precipitation; and, 2) to provide training as required by the MS4 Permit and applicable regulations violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this 30^{15} day of 400^{1} , 2014, pursuant to section
309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the
violations and any good faith efforts by Respondent to comply with section 301(a) of the Act.
Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

- 1. Within six months of the effective date of this Order, Respondent shall take all actions necessary to comply with its MS4 Permit, including but not limited to:
- a. Identify all Respondent's facilities which require NPDES General Industrial Stormwater Permits or individual industrial storm water permits;
- b. Develop and submit to EPA a schedule for obtaining permit coverage for Respondent's facilities identified in Section III.1.a., and to insure that all Respondent's facilities covered by an NPDES General Industrial Stormwater Permit are in compliance with their SWPP;
- c. Develop and implement a plan to assure that all soluble and erodible materials at Respondent's facilities are protected from exposure to precipitation;
- d. Develop and implement a formal pollution prevention and good housekeeping training program for Respondent's employees that includes a curriculum and set frequencies or performance goals for training activities;
- e. Develop and implement a plan to update the Respondent's MS4 System Map (storm sewer inventory map) to reflect, by June 30, 2018 (the end of the current permit cycle) inspection of all twenty-three (23) waterways in the City.
- 2. Within ninety (90) days of the effective date of this Order, Respondent shall submit a written report detailing the specific actions the Respondent will take to come into compliance with the MS4 Permit and permitting requirements for stormwater associated with industrial activities. The report shall be submitted to EPA, at the address provided in Paragraph IV.2, above.
- 3. All documents required by Paragraphs 1 and 2 of this Section shall be accompanied by a certification signed by a responsible corporate officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed	
Title	

All documents required herein shall be submitted to:

Peter Gold Environmental Engineer NPDES Enforcement Branch Mail Code 3WP42 U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

- 1. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.
- 2. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- 3. For purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Order.
- 4. By entering this Order, the Respondent does not admit any liability for the claims set forth herein.
- 5. Respondent waives any and all remedies, claims for relief and otherwise available claims for judicial or administrative review that Respondent may have with respect to any issue

of law or fact set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

V. EFFECTIVE DATE

This ORDER is effective upon receipt by the Respondent.

SO ORDERED:	
Date: 4/36/14	Jon Capacasa Director, Water Protection Division U.S. EPA Region III
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AGREED TO:	•
	For City of Richmond:
Date: 3/12//4	Name Byron C. Marshall
	Chief Administrative Officer Title

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

:

In the Matter of:

Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act

City of Richmond 900 East Broad Street Richmond, Virginia

Docket No. CWA-03-2014-0046

CONSENT AGREEMENT AND FINAL ORDER

Respondent

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

- 1. This Consent Agreement and Final Order (CAFO) is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III (Complainant) and the City of Richmond (Richmond or Respondent) pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).
- 2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.
- 3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

- 4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.
- 5. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

- 1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
- 2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.
- 3. Section 402(p) of the Act, 33 U.S.C. §1342(p) provides that both discharges from a municipal separate storm sewer system (MS4) and discharges associated with industrial activity may be subject to NPDES permitting requirements.
- 4. Pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), EPA authorized the Commonwealth of Virginia (Commonwealth or Virginia) NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth's request to transfer the issuance of general and individual permits for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation (VADCR).
- 5. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 11342(i), EPA retains its authority to take enforcement action in Virginia for NPDES permit violations.
- 6. The term "municipal separate storm sewer system" or "MS4" includes, *inter alia*, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial

wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8).

- 7. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) owned or operated by the United States, a State, city, town, borough... or other public body (created by or pursuant to State law) having jurisdiction over disposal of... storm water....; [and] (ii) Not defined as 'large' or 'medium' municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16) and (17).
- 8. Pursuant to 40 C.F.R. §122.26(a)(9)(i)(A), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
- 9. Pursuant to 40 C.F.R. §122.32(a)(1), the Commonwealth of Virginia has determined that Richmond is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit.
- 10. Therefore, Richmond is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).
- 11. The City's MS4 is covered under the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04, effective July 9, 2008. Richmond's permit registration number is VAR040005 (MS4 Permit).
- 12. The MS4 Permit requires Permittees to adhere to the Storm Water Management Program Requirements (Part I) and Conditions Applicable To All VPDES Permits (PART II) of the Permit.
- 13. Section II.B.6.d of the MS4 Permit states: "Materials that are soluble or erodible shall be protected from exposure to precipitation."
- 14. "Storm water discharges associated with industrial activity" is defined at 40 C.F. R. § 122.26(a)(14) and 9VAC25-151-10 and includes "Landfills, land application sites and open dumps that receive or have received any industrial wastes..." and "Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations or airport deicing operations..."
- i) Storm water discharges associated with industrial activity are required to be authorized by either the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Storm Water Discharges Associated with Industrial Activity (General VPDES Stormwater Industrial Permit), or by an individual VPDES permit for storm water discharges associated with

industrial activity.

- 16. Richmond owns and operates the Hopkins Road Facility located at 3502 North Hopkins Road, Richmond, Virginia and the East Richmond Road Landfill, located at 3800 East Richmond Road. The Hopkins Road Facility is classified under Standard Industrial Classification Code 4173 and has a vehicle maintenance shop and the East Richmond Road Landfill is an inactive landfill. At the time of the inspection, each of these facilities was required to be covered by the General VPDES Industrial Stormwater Permit.
- 17. Section II.B.g. of the permit requires the permittee: "to develop an ...employee training program to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and MS4 maintenance". The City's MS4 Program Plan in Section 6.2 states: "DPU will implement an employee training program for operations staff involved with vehicle maintenance and field activities that may impact the MS4."
- 18. On January 23 and 24, 2012 EPA conducted a review of Richmond's MS4 Program and its compliance with the MS4 Permit, including inspections of several City-owned facilities.
- 19. On May 15, 2012 EPA sent the report of EPA's January 23 and 24, 2012 inspection to Richmond. The Inspection Report Identified several deficiencies in Richmond's compliance with its MS4 Permit, as well as the absence of permit coverage for the industrial facilities noted above.
- 20. By letter dated June 29, 2012 Richmond sent a letter to EPA responding to numerous items identified in the inspection report and indicating its intent to comply with the various permit requirements identified in the report.

III. EPA FINDINGS OF VIOLATION

- 21. During its inspection, EPA inspected the Richmond Department of Public Works Hopkins Road Facility, which at the time included vehicle maintenance facilities, equipment and vehicle storage space as well as roadway maintenance equipment, natural gas fueling operations, refuse collection and waste transfer facilities and gravel and earthen materials stockpiles. At the time of the inspection, the facility did not have coverage under a VPDES Industrial Stormwater Permit.
- 22. During its inspection, EPA inspected the Richmond Department of Public Works East Richmond Road Landfill facility. This facility is an inactive landfill. At the time of the inspection, the East Richmond Road Landfill facility did not have coverage under the General VPDES Industrial Stormwater Permit.
- 23. During EPA's inspection of the Hopkins Road facility soluble and erodible materials were observed exposed to precipitation events. Diesel fuel containers were observed

without secondary containment, visible sheens were seen adjacent to storm drain inlets, road sands were stored in a partially uncovered area and white goods were stored on the ground surface without containment.

- 24. During EPA's inspection of the East Richmond Road Landfill facility, soluble and erodible materials were observed exposed to precipitation events. Inspectors observed a fueling island without an overhead cover, an unknown white, powdery substance spilling into the ground surface from overturned drums in an abandoned Parks and Recreation building, drums of diesel fuel without secondary containment and evidence of leaking fuel as well as crushed paint cans and dried paint spills at the site.
- 25. At the time of inspection, the City did not have an employee training program to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and MS4 maintenance.
- 26. Based upon the inspection, EPA has concluded that the Respondent's failure to: 1) have industrial storm water permits for the Hopkins Road and East Richmond Landfill facilities; 2) to prevent exposure of soluble and erodible materials to precipitation; and 3) to have an employee training program to prevent and reduce storm water pollution form activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and MS4 maintenance constitute violations of Section 301 of the CWA, 33 U. S. C. §1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

- 1. Respondent admits the jurisdictional allegations set forth herein.
- 2. For the purposes of this proceeding, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise and its right to appeal the proposed final order accompanying the consent agreement.
- 3. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
- 4. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
 - 5. Each party to this action shall bear its own costs and attorney fees.

- 6. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
- 7. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
- 8. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.
- 9. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **twelve thousand dollars (\$12,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.
- 10. Respondent shall pay the total administrative civil penalty of twelve thousand dollars (\$12,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA Civil Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, MO 63197-9000

Contact: Craig Steffen (513-487-2091)

By overnight delivery:

US EPA, Civil Penalties Government Lock Box 979077 1005 Convention Plaza Mail Station SL-MO-C2-GL St. Louis, MO 63101

Contact: Craig Steffen (513-487-2091)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV Enter sfo 1.1 in the search field Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make a payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00) U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029

-and-

Deane Bartlett, Esquire Mail Code 3RC20 Office of Regional Counsel U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029

- 11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.
- 12. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

- 13. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
- 14. This Consent Agreement and Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person,

including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

- 15. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
- 16. The penalty specified in Paragraph III. ¶, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
- 17. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
- 18. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
- 19. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period was concluded. This CAFO will become final and effective 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT, CITY OF RICHMOND:

Date:

By:

Byron C. Marshall Chief Administrative Officer

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 436 14

Jon M. Capacasa, Director Water Protection Division U.S. EPA Region III

SO ORDE	RED, pursuant to 33 U.S	S.C. 1319(g), and 40 C.F.R. Part 22	,
this	day of	, 2014	
Shawn M.			
Regional A	Administrator		
U.S. EPA	Region III		



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL RETURN RECEIPT REQUESTED

MAR 28 2013

Mr. James G. Vacalis City of Suffolk P.O. Box 1858 Suffolk, VA 23434

Re: Docket No. CWA-03-2013-0074DN

Administrative Order for Compliance and Request for Information

Dear Mr. Vacalis:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Suffolk submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Suffolk has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

ion M. Capacasa, Director

Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR

Jerome Brooks, VA DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

City of Suffolk 441 Market Street P.O. Box 1858 Suffolk, VA 23434 Docket No. CWA-03-2013-0074DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.

- In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.
- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:

- a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and
- b) "Designed or used for collecting or conveying storm water..."40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. .
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new

- development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.
- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Suffolk, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Suffolk, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Lake Kilby, Lake Meade, Lake Cahoon, Nansemond River, James River and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Lake Kilby, Lake Meade, Lake Cahoon, Nansemond River, James River and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- 24) The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. <u>VIOLATIONS</u>

Count 1: MCM 3: Illicit Discharge Detection and Elimination

27) Section II.B.3.d of the Permit requires the Respondent to "develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4."

- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Continue implementing an illicit discharge detection and elimination program for the municipally-owned MS4 within the Urbanized Area. Track illicit discharge detection and elimination activities. Develop a dry weather screening program that includes inspection procedures, enforcement, public education, and where prescribed frequency is based on 10% of known outfalls in high risk areas are to be monitored annually by the end of the permit cycle."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 3: Illicit Discharge Detection and Elimination

- Section II.B.3.e of the Permit requires the Respondent to "prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4. In addition, the MS4 Program must be reviewed to identify measures to prevent the recurrence of such releases and to respond to such releases, and the program must be modified where appropriate."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Prevent or minimize the discharge of hazardous substances and oil in the MS4 stormwater discharge. Yard inspections; Enhance reporting process with Fire Department/Haz Mat Team; targeted education."
- 34) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 3: MCM 5: Post-Construction Stormwater Management

- 35) Section II.B.5.b.(1) of the Permit requires the Respondent to "develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the operator's community. Where determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 37) Respondents MS4 Program Plan requires the Respondent to: "Encourage the use of LID as appropriate to local/regional conditions. Develop fact sheet/checklist to help developers and local staff determine appropriateness for LID project(s)."
- 38) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. CONCLUSIONS OF LAW

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this ______ day of _______, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 41) Within thirty (30) days of the effective date of this Order, Respondent shall:
 - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or

b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. EFFECTIVE DATE

47) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: **MAR 2 8 2013**

Jen M. Capacasa, Director Water Protection Division U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL RETURN RECEIPT REQUESTED

MAR 2 8 2013

Mr. Franklin T. Dunn Tidewater Community College P.O. Box 9000 Norfolk, VA 23509

Re: Docket No. CWA-03-2013-0085DN

Administrative Order for Compliance and Request for Information

Dear Mr. Dunn:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that Tidewater Community College submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the College: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the Tidewater Community College has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director

Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc:

Ginny Snead, VADCR Jerome Brooks, VA DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

Tidewater Community College 121 College Place P.O. Box 9000 Norfolk, VA 23509

Docket No. CWA-03-2013-0085DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.

- In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.
- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements... section 1342... he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:

- a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and
- b) "Designed or used for collecting or conveying storm water. . ."40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough... or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes..." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new

- development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.
- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) Tidewater Community College ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Norfolk, Virginia.
- Respondent's small MS4 discharged storm water into the Virginia Beach- unnamed tributary to the North Landing River, Chesapeake- unnamed tributary to the Elizabeth River, Southern Branch and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Virginia Beach- unnamed tributary to the North Landing River, Chesapeake- unnamed tributary to the Elizabeth River, Southern Branch and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 1: Public Education and Outreach

27) Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent

- outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."
- 28) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "The objective for this BMP is to increase the college community members' knowledge about the steps that they can take to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns. TCC understands that it may take some time to revise the stormwater education material. Therefore, TCC will continue to post, publish, and e-mail the existing material and brochures, while the material is revised. TCC will revise educational material to address stormwater discharges to impaired waters by July 9th, 2010. After this date, TCC will integrate the revised material into the distribution and circulation system previously identified. At the start of each semester and the summer session, checks of posted locations will allow for the replacement of information if necessary. TCC will continue to evaluate the posted materials to ensure accuracy of information and visibility to the college community."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 1: Public Education and Outreach

- Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "The objective for this BMP is to increase the public knowledge among the community of hazards associated with illegal discharges and improper disposal of waste, including pertinent college policies. TCC understands that it may take some time to revise the stormwater education material. Therefore, TCC will continue to post, publish, and e-mail the existing material and brochures, while the material is revised. TCC will revise educational material to address stormwater

discharges to impaired waters by July 9th, 2010. After this date, TCC will integrate the revised material into the distribution and circulation system previously identified. At the start of each semester and the summer session, checks of posted locations will allow for the replacement of information if necessary. TCC will continue to evaluate the posted materials to ensure accuracy of information and visibility to the college community."

- 34) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. <u>CONCLUSIONS OF LAW</u>

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 37) Within thirty (30) days of the effective date of this Order, Respondent shall:
 - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or

b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. <u>JUDICIAL REVIEW</u>

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. <u>EFFECTIVE DATE</u>

43) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 2 8 2013

Jon M. Capacasa, Director Water Protection Division U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

JUL 0 2 2013

Ms. Melanie Davenport, Director Water Division Virginia Department of Environmental Quality 629 East Main Street, P.O. Box 1105 Richmond, Virginia 23218

Re: Specific Objection to Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.)

Dear Ms. Davenport:

On April 3, 2013, the U. S. Environmental Protection Agency (EPA or the Agency), received a draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit regulation (construction general permit). EPA has reviewed the draft permit pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between EPA Region III and the Virginia State Water Control Board (1975) (as well as subsequent agreements).

EPA provided comments to the Virginia Department of Conservation and Recreation (DCR) and the Department of Environmental Quality (DEQ) on the draft permit regulations, including marked-up copies of the draft regulations and fact sheet, on June 10, 2013. On June 20, EPA discussed these comments with representatives from DCR, DEQ and the Commonwealth's Attorney General's Office. The Agency is pleased that our agencies have reached agreement in principle on the resolution of several issues. However, EPA's 90-day review expires on July 2, 2013, and Virginia has requested additional time to submit a revised draft permit regulation and fact sheet to confirm that the agreed-upon changes have been made. Therefore, EPA is issuing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A.2 of the MOA.

EPA's objection to the draft permit and identification of revisions that are needed before EPA can remove the objection, see 40 C.F.R. § 123.44(b)(2)(ii), are described below:

1. <u>Timing of SWPPP Development, Registration Statement Submission and Permit Coverage</u>

Federal regulations require construction stormwater permittees to provide a description of the construction activity and proposed measures to control pollutants during and after construction activities, as well as an application for permit coverage. See 40 C.F.R. § §122.26(c)(1)(ii), 122.21(a)(2)(i) and (iv). Federal regulations also prescribe the timing requirements for all NPDES

applications, including construction stormwater permits, as well as the required elements that must be submitted. See 40 C.F.R. § §122.21(c)(1) and (f). EPA objects to the draft permit regulations because they do not clearly specify what plans need to be prepared at the time that the registration statement for permit coverage is submitted.

Specifically, 4VAC50-60-1150 subsection B.11 of the proposed permit regulations does not require a Stormwater Pollution Prevention Plan (SWPPP) to be completed prior to the submission of a registration statement. Given that the SWPPP and its components (including an erosion and sediment control plan, stormwater management plan, and pollution prevention plan) are required to contain important information about the site and practices to control pollution during and after construction activities, the SWPPP must be completed prior to submission of the registration statement so that it is available to authorities for review prior to issuing permit coverage. In other words, development of a sufficient SWPPP is a condition precedent to permit coverage.

To resolve this portion of the objection, 4VAC50-60-1150 subsection B.11 must be revised as follows: "A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General Permit for Stormwater Discharges from Construction Activities prior to land disturbance submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP will be has been prepared prior to land disturbance." These revisions are consistent with Virginia's current construction general permit.

The draft permit must also clarify the timeline for submitting the registration statement (and therefore preparing the SWPPP) and the process for review and approval prior to issuance of permit coverage. In discussions with DCR and DEQ, EPA was pleased to hear that the permittee will be required to complete the SWPPP and its components prior to submitting a registration statement, and that the Virginia Stormwater Management Program (VSMP) authority would review these documents prior to issuing coverage. In order to resolve this portion of the objection, DEQ must clarify that sequence of document completion and submission by the permittee, and document review and issuance of coverage by the VSMP authority in 4VAC50-60-1150 subsection A.1-2 and the fact sheet. This subsection of the permit regulations and the fact sheet should also clarify which VSMP authority – the Board, the Department, or the local authority – will review documents and issue coverage.

If Virginia does not provide this clarification, then 4VAC50-60-1150 subsection A.1 must be revised to read: "Except as provided in subdivision 3 of this subsection, operators must certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and submit a complete and accurate registration statement to the VSMP authority in accordance with the requirements of this section at least 15 calendar days prior to the issuance of commencement of construction in order to receive coverage under the general permit that authorizes the commencement of land disturbing activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities)." Likewise, 4VAC50-60-1150 subsection A.2 must be revised as follows: "For stormwater discharges from construction activities where the operator has changeds since the time of the previous application, the new operator must certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the

department and submit a complete registration statement or transfer form <u>at least 15 calendar days</u> prior to assuming operational control over site specifications or commencing work on-site."

2. Consistency with the Chesapeake Bay TMDL

All construction activities resulting in land disturbance greater than one acre are required to receive permit coverage and, if in a watershed with a total maximum daily load (TMDL), are required to implement controls to address any pollutants of concern unless a TMDL or equivalent analysis shows that allocations for construction activities are not needed to protect water quality. See 40 CFR §122.26(b)(15)(i)(B). Further, NPDES permit provisions must be consistent with assumptions and allocations of any applicable wasteload allocation for the discharge. See 40 CFR §122.44(d)(1)(vii)(B). Given that both the Chesapeake Bay TMDL and Virginia's Watershed Implementation Plan (which documents how the State will achieve and maintain water quality standards in the Chesapeake Bay) identify construction activities as a source of pollutants of concern, and also that they assume pollutants from these activities will be controlled, all construction activities resulting in land disturbance greater than one acre within the Bay watershed must be consistent with the assumptions and allocations of the Bay TMDL. In order to resolve this portion of the objection, 4VAC50-60-1170 Section I.B.3.a(4)(a-c) must be revised as follows: "(a) All construction activities outside of Tidewater Virginia, as defined in § 10.1-2101 of the Code of Virginia, that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 20 acres; (b) All construction activities inside of Tidewater Virginia, as defined in § 10.1-2101 of the Code of Virginia, that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 10 acres; (c) All construction activities that discharge to a surface water located within a TMDL watershed other than including the Chesapeake Bay watershed and that disturb greater than or equal to five one acres; and..." EPA is pleased that DCR and DEQ have agreed in principle to make this change, and we look forward to receiving the revised draft permit and fact sheet.

3. Definitions

The definitions included in 4VAC50-60-1100 do not include all of the defined terms referred to in the subsequent draft permit regulations. EPA was pleased to hear from DCR and DEQ that other VSMP regulations define these terms. EPA looks forward to reviewing these definitions (e.g., via a crosswalk) when they are provided by DEQ. If the definitions do not cover all of the critical terms used in the permit such as "site," "construction site", "permitted area," "facility," "Board," "Department," "minimize," and "permanent stabilization," or the definitions are not consistent with federal regulations, DEQ will need to add or modify these definitions accordingly in order to resolve this portion of the objection.

DCR must also make the following changes to the definitions provided in 4VAC50-60-1100 in order to resolve this portion of the objection:

"'Final stabilization' means...

"1.... (e.g., evenly distributed, without large bare areas), mature enough to survive, and will inhibit erosion, is perennial, and has a density of at least 70 percent of the natural background vegetative cover...

"3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction)...

"Impaired waters' means surface waters identified as impaired on the 2012 the most recent § 305(b)/303(d) Water Quality Assessment Integrated Report or waters with an EPA-approved or established TMDL. A construction site will be considered to discharge to an impaired water if the first water of the U.S. to which the operator discharges is identified by a state, tribe, or EPA pursuant to Section 303(d) of the CWA as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which the operator discharges is the waterbody that receives the stormwater discharge from the storm sewer system."

4. <u>Limitations on Coverage for Discharges to Impaired Waters</u>

The draft permit regulations limit coverage for discharges to impaired waters where discharges are identified as a source on the 2012 "305(b)/303(d) Water Quality Assessment Integrated Report", or where they are identified as a pollutant of concern in TMDLs approved prior to July 2014. However, EPA is aware that Virginia will publish further 305(b)/303(d) Water Quality Assessment Integrated Reports subsequent to the 2012 Report, and also that the State will establish additional TMDLs prior to the expiration of the proposed permit regulations. The Agency also expects that permittees will submit applications for coverage, or registration statements, throughout the permit cycle. EPA therefore strongly recommends revising the references to the § 305(b)/303(d) Reports and TMDLs in 4VAC50-60-1130 Subsections A.3 and B.5, as well as 4VAC50-60-1170 Section I.B.3, as follows: "the 2012 most recent § 305(b)/303(d) Water Quality Integrated Report or identified as a pollutant of concern in TMDLs approved prior to July 2014."

These revisions are necessary to ensure that the draft permit regulations are clear, protective of water quality and enforceable. Failure to address water quality considerations effective at the time permit coverage is sought would not result in a permit that is protective of water quality. As an aside, these revisions are also consistent with the construction general permit issued by EPA in 2012. EPA is pleased that DCR and DEQ agreed to consider these revisions during recent discussions.

The following are additional recommendations for the draft permit.

1. Availability of SWPPP

The draft permit provisions for SWPPP availability under 4VAC50-60-1170 Section I I.D contrast sharply with both Virginia's current permit regulations and EPA's most recent Construction General Permit (2012). In that regard, the draft permit does not specify how a member of the public may access the SWPPP from a location other than the construction site. EPA's Construction General Permit states that:

"7.3 ON-SITE AVAILABILITY OF YOUR SWPPP"

"You are required to keep a current copy of your SWPPP at the site or an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by EPA; a state, tribal, or local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).

EPA may provide access to portions of your SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the Public, but may not be withheld from EPA, USFWS, or NMFS. If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of your construction site."

Alternatively, EPA recommends adding the following provisions to Section II.D in order to make the draft permit regulations consistent with Virginia's current regulations and EPA's construction general permit:

- "3. For discharges that commence on or after July 1, 2014, that have not previously received coverage under a state or VPDES permit, the operator shall make the SWPPP available to the public for review. A copy of the SWPPP for each site shall be made available on the Internet or in hard copy."
- "4. The department, VSMP authority, VESCP authorities or local government officials may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information will be withheld from the public, but may not be withheld from EPA, USFWS or NMFS."

If DEQ does not incorporate these provisions into the draft permit regulations, EPA recommends that the fact sheet explain why provisions for SWPPP availability have changed and how a member of the public may access SWPPPs through Virginia's Freedom of Information Act (FOIA) process. Either of these changes will add record support to strengthen the permit.

2. Additional Recommendations in Enclosed Markups

EPA recommends that DEQ make the additional revisions to the draft permit regulation and fact sheet that are identified in the enclosed markup. These revisions are important to increase clarity and consistency with EPA's expectations for construction general permits and should make the permit more enforceable.

EPA appreciates the constructive discussions that have taken place among EPA, DCR, DEQ and the Virginia Attorney General's Office to date. We look forward to continuing to work cooperatively with Virginia to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, neither DCR nor DEQ may issue the construction permit regulations without written authorization from EPA. See 40 C.F.R §122.4(c).

If you have any questions, please contact me or contact Ms. Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

Enclosures

cc: Ginny Snead, DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

<u>CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u>

MAR 2 8 2013

Dr. John T. Wells Virginia Institute of Marine Science P.O. Box 1346 Gloucester Point, VA 23062

Re: Docket No. CWA-03-2013-0076DN

Administrative Order for Compliance and Request for Information

Dear Dr. Wells:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the Virginia Institute of Marine Science submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the Institute: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the Virginia Institute of Marine Science has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc:

Ginny Snead, VADCR Jerome Brooks, VA DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

Virginia Institute of Marine Science 1208 Greate Road P.O. Box 1346 Gloucester Point, VA 23062

Docket No. CWA-03-2013-0076DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.

- In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.
- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:

- a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and
- b) "Designed or used for collecting or conveying storm water . . . "40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough... or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes..." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new

- development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.
- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- Virginia Institute of Marine Science ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Gloucester County, Virginia.
- Respondent's small MS4 discharged storm water into the York River and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the York River and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. <u>VIOLATIONS</u>

Count 1: MCM 1: Public Education and Outreach

27) Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."

- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 29) Respondents MS4 Program Plan requires the Respondent to: "Provide advice to establish riparian vegetative buffer demonstration plantings. Reach one major government entity."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 5: Post-Construction Stormwater Management

- 31) Section II.B.5.a of the Permit requires the Respondent to "develop, implement, and enforce procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 33) Respondents MS4 Program Plan requires that the Respondent: "Determine Impervious/Pervious Area of VIMS. Baseline impervious/pervious area and update as needed."
- 34) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 3: MCM 5: Post-Construction Stormwater Management

- Section II.B.5.a of the Permit requires the Respondent to "develop, implement, and enforce procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 37) Respondents MS4 Program Plan requires that the Respondent: "Develop topographic maps for drainage. Develop electronic files of drainage patterns."
- 38) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 4: MCM 5: Post-Construction Stormwater Management

- 39) Section II.B.5.b.(5) of the Permit requires the Respondent to "conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 41) Respondents MS4 Program Plan requires that the Respondent: "Inspect seven BMPs semi-annually for sedimentation and capture of flow."
- 42) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or

b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. <u>CONCLUSIONS OF LAW</u>

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this ______ day of _______, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- Within thirty (30) days of the effective date of this Order, Respondent shall:
 - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
 - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its

truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.

47)

- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. <u>JUDICIAL REVIEW</u>

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. <u>EFFECTIVE DATE</u>

52) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: ______MAR 2 8 2013

Jon M. Capacasa, Director Water Protection Division U.S. EPA, Region III

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

8/30/2004

Mr. Alan Pollock, Acting Director Division of Water Quality Programs Virginia Department of Environmental Quality 629 Main Street Richmond, VA 23219

Dear Mr. Pollock:

The United States Environmental Protection Agency (EPA) Region III is pleased to approve the Total Maximum Daily Loads (TMDLs) for the primary contact and aquatic life (benthic) use impairments on Peak Creek. The TMDLs were submitted to EPA for review in April 2004. The TMDLs were established and submitted in accordance with Section 303(d)(1)(c) and (2) of the Clean Water Act to address an impairment of water quality as identified in Virginia's 1996 Section 303(d) list.

In accordance with Federal regulations at 40 CFR §130.7, a TMDL must comply with the following requirements: (1) designed to attain and maintain the applicable water quality standards, (2) include a total allowable loading and as appropriate, wasteload allocations (WLAs) for point sources and load allocations for nonpoint sources, (3) consider the impacts of background pollutant contributions, (4) take critical stream conditions into account (the conditions when water quality is most likely to be violated), (5) consider seasonal variations, (6) include a margin of safety (which accounts for uncertainties in the relationship between pollutant loads and instream water quality), (7) consider reasonable assurance that the TMDL can be met, and (8) be subject to public participation. The enclosure to this letter describes how the TMDLs for the aquatic life and primary contact use impairments satisfy each of these requirements.

Following the approval of these TMDLs, Virginia shall incorporate the TMDLs into an appropriate Water Quality Management Plan pursuant to 40 CFR § 130.7(d)(2). As you know, all new or revised National Pollutant Discharge Elimination System permits must be consistent with the TMDL WLA pursuant to 40 CFR §122.44 (d)(1)(vii)(B). Please submit all such permits to EPA for review as per EPA's letter dated October 1, 1998.

If you have any questions or comments concerning this letter, please don't hesitate to contact Mr. Peter Gold at (215) 814-5236.

Sincerely,

/S/

Jon M. Capacasa, Director Water Protection Division

Enclosure

Decision Rationale

Total Maximum Daily Loads for the Primary Contact (Bacteriological) and Aquatic Life Use Impairments on Peak Creek

I. Introduction

The Clean Water Act (CWA) requires a Total Maximum Daily Load (TMDL) be developed for those water bodies identified as impaired by a state where technology-based and other controls will not provide for attainment of water quality standards. A TMDL is a determination of the amount of a pollutant from point, nonpoint, and natural background sources, including a margin of safety (MOS), that may be discharged to a water quality-limited water body.

This document will set forth the Environmental Protection Agency's (EPA's) rationale for approving the TMDLs for the primary contact (bacteriological) and aquatic life use impairments on Peak Creek. EPA's rationale is based on the determination that the TMDLs meet the following eight regulatory conditions pursuant to 40 CFR §130.

- 1) The TMDLs are designed to implement applicable water quality standards.
- 2) The TMDLs include a total allowable load as well as individual waste load allocations and load allocations.
- 3) The TMDLs consider the impacts of background pollutant contributions.
- 4) The TMDLs consider critical environmental conditions.
- 5) The TMDLs consider seasonal environmental variations.
- 6) The TMDLs include a margin of safety.
- 7) There is reasonable assurance that the TMDLs can be met.
- 8) The TMDLs have been subject to public participation.

II. Background

The Peak Creek Watershed is located in Pulaski County, Virginia. Peak Creek is a tributary to Claytor Lake in the New River Basin. The bacteriological and benthic impairments on Peak Creek extend from 0.2 miles downstream of the Washington Street Bridge to the backwaters of Claytor Lake (4.46 miles). The 53,976-acre watershed is rural with forested and agricultural lands making up 65 and 25 percent of the watershed respectively. Residential and commercial lands make-up the remainder of the watershed.

In response to Section 303(d) of the CWA, the Virginia Department of Environmental Quality (VADEQ) listed Peak Creek (VAW-N17R) on Virginia's 1996 Section 303(d) list as being unable to attain the primary contact use, the aquatic life use impairment was added to the 1998 Section 303(d) List. The decision to list Peak Creek for these impairments was based on

observed violations of the Commonwealth's bacteriological criteria and assessments of the biological assemblage. At the time of its listing, the bacteria criteria used fecal coliform as an indicator species and had an instantaneous standard 1,000 colony forming units (cfu) per 100 milliliters (ml) and geometric mean standard of 200 cfu/100ml. This decision rationale will address the TMDLs for both impairments.

Fecal coliform is a bacterium which can be found within the intestinal tract of all warm blooded animals. Fecal coliform indicates the presence of fecal wastes and the potential for the existence of other pathogenic bacteria. The higher concentrations of fecal coliform indicate the elevated likelihood of increased pathogenic organisms.

EPA encouraged the states to use e-coli and enterococci as the indicator species instead of fecal coliform. A better correlation was drawn between the concentrations of e-coli and enterococci, and the incidence of gastrointestinal illness. The Commonwealth adopted e-coli and enterococci criteria in January 2003. According to the new criteria, streams are evaluated via the e-coli and enterococci criteria after 12 samples have been collected using these indicator species. Twelve e-coli samples were collected from Peak Creek and it is therefore assessed according to the new criteria.

As Virginia designates all of its waters for primary contact, all waters are required to meet the bacteriological standard for primary contact. Virginia's standard applies to all streams designated as primary contact for all flows. The e-coli criteria requires a geometric mean concentration of 126 cfu/100ml of water with no sample exceeding 235 cfu/100 ml of water. The new e-coli criteria requires the concentration of e-coli not exceed 235 cfu/100ml of water.

Although the TMDL and criteria require the 235 cfu/100 ml of water concentration limit not be exceeded, waters are not placed on the Section 303(d) list if their violation rate does not exceed 10 percent. Therefore, Peak Creek may be deemed as attaining its primary contact use prior to the implementation of all of the TMDL reductions. It is necessary to keep this in mind because the reductions required to attain the instantaneous criteria for e-coli in the model are extremely stringent.

To assess the biological integrity of a stream, Virginia uses EPA's Rapid Bioassessment Protocol II (RBPII) to determine status of a stream's benthic macroinvertebrate community. This approach evaluates the benthic macroinvertebrate community between a monitoring site and its reference station. Measurements of the benthic community, called metrics, are used to identify differences between monitored and reference stations. The state is currently in the process of changing this methodology to a stream condition index (SCI) approach.

¹Tetra Tech 2002. Total Maximum Daily Load (TMDL) Development for Blacks Run and Cooks Creek. Fairfax, Virginia.

²Ibid 1

As part of the RBPII approach, reference stations are established on streams which are minimally impacted by humans and have a healthy benthic community. These reference stations represent the desired community for the monitored sites. Monitored sites are evaluated as non-impaired, slightly impaired, moderately impaired, or severely impaired based on a comparison of the biological community of the reference and monitored sites. Streams that are classified as moderately (after a confirmatory assessment) or severely impaired after an RBPII evaluation are classified as impaired and are placed on the Section 303(d) list of impaired waters. Peak Creek was assessed as moderately impaired.

The RBPII analysis assesses the health of the macroinvertebrate community of a stream. The analysis will inform the biologist if the stream's benthic community is impaired. However, it will not inform the biologist as to what is necessarily causing the degradation of the benthic community. Additional analysis may be required to determine the pollutants which are causing the impairment as some information can be gleaned based on based on the composition of the community. TMDL development requires the identification of impairment causes and the establishment of numeric endpoints that will allow for the attainment of designated uses and water quality criteria.³

A reference watershed approach was used to determine the numeric endpoints for the pollutants impacting Peak Creek. Numeric endpoints represent the water quality goals that are to be achieved through the implementation of the aquatic life use TMDL which will allow the impaired water to attain its designated use. A reference watershed approach is based on selecting a non-impaired watershed that shares similar landuse, ecoregion, and geomorphological characteristics with the impaired watershed. The stream conditions and loadings in the reference stream are assumed to be the conditions needed for the impaired stream to attain standards.

The bacteriological TMDL submitted by Virginia is designed to determine the acceptable load of e-coli which can be delivered to the impaired segment, as demonstrated by the Hydrologic Simulation Program Fortran (HSPF), in order to ensure that the water quality standard is attained and maintained. HSPF is considered an appropriate model to analyze the impaired water because of its dynamic ability to simulate both watershed loading and receiving water quality over a wide range of conditions. The model was run to determine the fecal coliform loading to Peak Creek. A translator equation was used to convert fecal coliform results to E-coli.

The bacteriological TMDL analysis allocates the application/deposition of fecal coliform to land based and instream sources. For land based sources, the HSPF model accounts for the buildup and washoff of pollutants from these areas. Buildup (accumulation) refers to all of the complex spectrum of dry-weather processes that deposit or remove (die-off) pollutants between

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storms.⁴ Washoff is the removal of fecal coliform which occurs as a result of runoff associated with storm events. These two processes allow the model to determine the amount of fecal coliform from land based sources which is reaching the stream. Point sources and wastes deposited directly to the stream were treated as direct deposits. Wastes which are deposited directly to the stream do not need a transport mechanism.

Local rainfall and temperature data were needed to develop the model. Weather data provides the rainfall data which drives the TMDL model. Weather data was obtained from the NWS Station #446955 in Pulaski County for the bacteria and benthic TMDLs.

Continuous stream flow data was not available for Peak Creek. Therefore, a paired watershed approach was used to develop the hydrology model for the bacteria TMDL. The model was developed to a United States Geological Survey (USGS) gage on Upper Tinker Creek. The input parameters used for this model were then used as the basis for the Peak Creek hydrology model. The results of the Peak Creek hydrology model were compared to limited USGS data collected from station 03168450 (Peak Creek at Magnox-Pulaski). The watershed was divided into nine segments for the model. The bacteria loading model was calibrated and validated against observed data from the VADEQ monitoring stations within the Peak Creek Watershed.

The benthic TMDL was developed using the Generalized Watershed Loading Function model (GWLF). The GWLF model provides the ability to simulate runoff, sediment, and nutrient loadings from watersheds given variable source areas (e.g., agricultural, forested, and developed land).⁵ GWLF is a continuous simulation model that uses daily time steps for weather data and water balance calculations.⁶ Calculations are made for sediment based on daily water balance totals that are summed to give monthly values. A mass balance model to predict the concentrations of metals in stream sediments was used in combination with the GWLF to determine the loading of metals to the stream. The concentrations of copper and zinc in the sediments were modeled and calibrated to the median concentrations observed at ambient monitoring stations.

A reference watershed approach was used to estimate the necessary load reduction needed to restore a healthy aquatic community and allow the Peak Creek to achieve its designated uses. The Upper Peak Creek Watershed was selected as the reference watershed for Peak Creek. The target copper and zinc loads for the impaired segment was the median monitored sediment concentrations of copper and zinc in Upper Peak Creek.

⁴CH2MHILL, 2000. Fecal Coliform TMDL Development for Cedar, Hall, Byers, and Hutton Creeks Virginia,

⁵Ibid 1

⁶Ibid 1

Segment	Parameter	TMDL	WLA	LA	MOS
Peak Creek	E-coli (cfu/yr)	4.26E+12	8.70E+08	4.26E+12	Implicit
Peak Creek	Copper (kg/yr)	218	12	206	Implicit
Peak Creek	Zinc (kg/yr)	1,833	57	1,776	Implicit

The United States Fish and Wildlife Service has been provided with copy of these TMDLs.

III. Discussion of Regulatory Conditions

EPA finds that Virginia has provided sufficient information to meet all of the eight basic requirements for establishing a primary contact (bacteriological) and aquatic life (benthic) use impairment TMDLs for Peak Creek. EPA is therefore approving these TMDLs. EPA's approval is outlined according to the regulatory requirements listed below.

1) The TMDLs are designed to meet the applicable water quality standards.

Bacteria

Virginia has indicated that excessive levels of fecal coliform due to nonpoint sources (both wet weather and directly deposited nonpoint sources) have caused violations of the water quality criteria and designated uses on Crab Creek. The water quality criterion for fecal coliform was a geometric mean 200 cfu/100ml or an instantaneous standard of no more than 1,000 cfu/100ml. Two or more samples over a thirty-day period are required for the geometric mean standard. Since the state rarely collects more than one sample over a thirty-day period, most of the samples were measured against the instantaneous standard.

The Commonwealth has changed its bacteriological criteria as indicated above. The new e-coli criteria requires a geometric mean of 126 cfu/100ml of water with no sample exceeding 235 cfu/100 ml. The new criteria is more stringent and if the loading remains constant the violation rate should increase.

The HSPF model was used to determine the fecal coliform deposition rates to the land as well as loadings to the stream from direct deposit sources. Once the existing load was determined, allocations were assigned to each source category to develop a loading pattern that would allow Peak Creek to support the e-coli water quality criterion and primary contact use. The following discussion is intended to describe how controls on the loading of e-coli to Peak Creek will ensure that the criterion is attained.

The TMDL modelers determined the fecal coliform production rates within the watershed. Data used in the model was obtained from a wide array of sources, including farm

practices in the area, the amount and concentration of farm animals, animal access to the stream, wildlife in the watershed, wildlife fecal production rates, landuses, weather, stream geometry, etc.. The model combined all of the data to determine the hydrology and water quality of the stream. The lands within the watersheds were categorized into specific landuses. The landuses had specific loading rates and characteristics that were defined by the modelers. Therefore, the loading rates are different in lands defined as forested versus pasture. Pasture lands support cattle and are influenced differently by stormwater runoff.

The Peak Creek bacteria TMDL model was run using weather data collected from the NWS Station #446955 weather station in Pulaski County. This data was used to determine the precipitation rates in the watershed which transport land deposited pollutants to the stream through overland and groundwater flow. Waste that was deposited to the land or stored was subjected to a die-off rate. The longer fecal coliform stayed on the ground the greater the die-off. Materials that were washed off the surface shortly after deposition were subjected to less die-off. The hydrology model of the TMDL was calibrated to a paired watershed (Upper Tinker Creek) that was determined to have similar hydrology to Peak Creek. This model was transferred to Peak Creek and then calibrated for hydrologic accuracy using instantaneous flow data collected on Peak Creek at a USGS monitoring station. The water quality model for bacteria was calibrated to observed data collected from Peak Creek.

Through the development of this and other similar TMDLs, it was discovered that natural conditions (wildlife contributions to the streams) could cause or contribute to violations of the bacteria criteria. BST sampling data collected on Peak Creek indicated that bacteria from wildlife represents a significant portion of the instream load. Many of Virginia's TMDLs, including the TMDL for Peak Creek, have called for some reduction in the amount of wildlife contributions. EPA believes that a significant reduction in wildlife is not practical and will not be necessary due to the implementation plan discussed below.

A phased implementation plan will be developed for all streams in which the TMDL calls for reductions in wildlife. In Phase 1 of the implementation, the Commonwealth will begin implementing the reductions (other than wildlife) called for in the TMDL. In Phase 2, which can occur concurrently to Phase 1, the Commonwealth will consider addressing its standards to accommodate this natural loading condition. The Commonwealth has indicated that during Phase 2, it may develop a Use Attainability Analysis (UAA) for streams with wildlife reductions which are not used for frequent bathing. Depending upon the result of the UAA, it is possible that these streams could be designated for secondary contact.

After the completion of Phase 1 of the implementation plan, the Commonwealth will monitor the stream to determine if the wildlife reductions are actually necessary, as the violation level associated with the wildlife loading may be smaller than the percent error of the model. In Phase 3, the Commonwealth will investigate the sampling data to determine if further load reductions are needed in order for these waters to attain standards. If the load reductions and/or the new application of standards allow the stream to attain standards, then no additional work is warranted. However, if standards are still not being attained after the implementation of Phases

1 and 2, further work and reductions will be warranted.

Benthic

As stated above, the biological assessments on Peak Creek were not able to discern a clear stressor to the Creek. The TMDL modelers therefore conducted a stressor identification analysis to determine what was impacting the benthic community. Ambient water quality data was able to rule out dissolved oxygen (DO), temperature or sediment as the stressors to Peak Creek. An excessive loading of copper and zinc were seen as the cause of the benthic impairment on Peak Creek. In high enough concentrations, both Copper and zinc can be toxic to aquatic organisms having detrimental impacts on the benthic community. Sporadic violations of the probable effects concentration (PEC) were observed for both copper and zinc. Also the biological community was composed of metals tolerant species in the impacted areas. These same organisms made up a smaller portion of the benthic community in non-impacted areas.

The GWLF model was used to determine the loading rates of sediment to the impaired and reference stream from all point and nonpoint sources. The TMDL modelers determined the sediment loading rates within each watershed. Data used in the model was obtained on a wide array of items, including land uses in the area, point sources in the watershed, weather, stream geometry, etc.. A mass balance equation was used to determine the concentrations of copper and zinc in the sediment.

The GWLF model provides the ability to simulate runoff and sediment loadings from watersheds given variable source areas (e.g., agricultural, forested, and developed land). GWLF is a continuous simulation model that uses daily time steps for weather data and water balance calculations. Local rainfall and temperature data were needed to simulate the hydrology, this data was obtained from NWS station #446955. In the GWLF model, the nonpoint source load calculation is affected by terrain conditions, such as the amount of vegetative, land slope, soil erodibility, and land practices used in the area. Parameters within the model account for these conditions and practices. Since there were no flow gages with appropriate data for calibrating the GWLF model within the impaired and reference watersheds, the hydrology component of the model was not calibrated to observed flow data. The GWLF was developed to be used on watersheds without gage data.

2) The TMDLs include a total allowable load as well as individual waste load allocations and load allocations.

Total Allowable Loads

Virginia indicates that the total allowable loading is the sum of the loads allocated to land

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⁸Ibid 1

based precipitation driven nonpoint source areas (forest and agricultural land segments) and point sources. Activities that increase the levels of bacteria, copper and zinc to the land surface or their availability to runoff are considered flux sources. The actual value for total loading can be found in Table 1 of this document. The total allowable load is calculated on an annual basis.

Waste Load Allocations

Thirteen regulated facilities were identified as discharging to the Peak Creek Watershed. Of these thirteen facilities, one is permitted to discharge bacteria to Peak Creek, two are permitted to discharge copper and zinc and one is permitted to discharge zinc. Only one of the three facilities which are allowed to discharge metals is a non-stormwater facility. That facility is the Magnox Pulaski Corporation and its waste load allocation can be determined by multiplying its permitted flow by its allowable concentration of copper and zinc by 365 days after the appropriate unit conversions. The other two facilities which are allowed to discharge metals are stormwater facilities and their WLA is based on the average stormwater flow. The permitted discharger of bacteria is a private residence and is allowed to discharge 500 gallons of effluent per day with a bacteria concentration of 126 cfu/100ml. Its WLA can be determined by multiplying the flow by the concentration by 365 days after the appropriate unit conversions.

EPA regulations require that an approvable TMDL include individual waste load allocations (WLAs) for each point source. According to 40 CFR 122.44(d)(1)(vii)(B), "Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with assumptions and requirements of any available WLA for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7." Furthermore, EPA has authority to object to the issuance of any National Pollutant Discharge Elimination System (NPDES) permit that is inconsistent with the WLAs established for that point source.

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Table 2	- W I	ΑC	tor	Peak	l reek

Facility	Permit Number	E-Coli (cfu/yr)	Copper (kg/yr)	Zinc (kg/yr)
Private Residence	VAG402040	8.70E+08	0.0	0.0
Magnox Pulaski Inc	VA0000281	0.0	12	57
McCready Lumber Company	VAR050772	0.0	0.6	0.6
Gem City Iron and Metal	VAR520118	0.0	0.1	0.0

Load Allocations

According to Federal regulations at 40 CFR 130.2(g), load allocations (LAs) are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Wherever possible, natural and nonpoint source loads should be distinguished.

In order to accurately simulate landscape processes and nonpoint source loadings of bacteria, VADEQ used the HSPF model to represent the impaired watersheds. The HSPF model is a comprehensive modeling system for the simulation of watershed hydrology, point and nonpoint source loadings, and receiving water quality. HSPF uses precipitation data for continuous and storm event simulation to determine total loading to the impaired segments from the various land uses within the watershed.

For the metals TMDL the GWLF model was used to ascertain the sediment loading to Peak Creek. This model provides the monthly sediment load to the stream through the use of the universal soil loss equation (USLE). The USLE derives the sediment loading by using information on precipitation rates, best management practices, land slope, and vegetative cover. The current property owners of the Allied Signal Site are working with EPA Removal section to remove historic metals contamination from the site. Table 3a, 3b and 3c list the LAs for Peak Creek.

Table 3a - LA for Bacteria (E-coli) for Peak Creek

Source Category	Existing Load (cfu/yr)	Allocated Load (cfu/yr)	Percent Reduction
Residential	4.64E+14	2.32E+12	99.5
Commercial	7.43E+12	3.72E+10	99.5
Barren	6.93E+12	3.47E+10	99.5
Cropland	5.02E+15	2.51E+13	99.5
Livestock Access	2.36E+14	1.18E+12	99.5
Pasture	3.20E+15	1.60E+13	9995
Forest	5.70E+13	1.71E+13	68
Livestock - Direct	3.36E+15	0.00E+00	100
Wildlife - Direct	1.46E+13	1.46E+13	0
Straight Pipes and Sewer Overflows	2.99E+13	0.00E+00	100

Table 3b - LA for Copper for Peak Creek

Source Category	Existing Load (g/yr)	Proposed Load (T/yr)	Percent Reduction
Background	1.45E+05	1.20E+05	17
Urban Stormwater	8.27E+04	5.99E+04	28
Allied Signal Stormwater	2.51E+06	2.51E+04	99
Magnox Process Water	1.23E+04	1.23E+04	0

Magnox Stormwater 1	1.41E+02 1.41E	0 0	
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Table 3b - LA for Zinc for Peak Creek

Source Category	Existing Load (g/yr)	Proposed Load (T/yr)	Percent Reduction
Background	7.52E+05	7.52E+05	0
Urban Stormwater	4.39E+05	4.39E+05	0
Allied Signal Stormwater	3.44E+06	5.85E+05	83
Magnox Process Water	5.60E+04	5.60E+04	0
Magnox Stormwater	9.57E+02	9.57E+02	0

3) The TMDLs consider the impacts of background pollution.

The TMDL considers the impact of background pollutants by considering the bacteria and metals loadings from background sources like wildlife and upland segments.

4) The TMDLs consider critical environmental conditions.

According to EPA's regulation 40 CFR 130.7 (c)(1), TMDLs are required to take into account critical conditions for stream flow, loading, and water quality parameters. The intent of this requirement is to ensure that the water quality of Peak Creek is protected during times when it is most vulnerable.

Critical conditions are important because they describe the factors that combine to cause a violation of water quality standards and will help in identifying the actions that may have to be undertaken to meet water quality standards⁹. Critical conditions are a combination of environmental factors (e.g., flow, temperature, etc.), which have an acceptably low frequency of occurrence. In specifying critical conditions in the waterbody, an attempt is made to use a reasonable "worst-case" scenario condition. For example, stream analysis often uses a low-flow (7Q10) design condition because the ability of the waterbody to assimilate pollutants without exhibiting adverse impacts is at a minimum.

The HSPF and GWLF models were run over a multi-year period to insure that they accounted for a wide range of climatic conditions. The allocations developed in these TMDLs will therefore insure that the criteria are attained over a wide range of environmental conditions including wet and dry weather conditions.

⁹EPA memorandum regarding EPA Actions to Support High Quality TMDLs from Robert H. Wayland III, Director, Office of Wetlands, Oceans, and Watersheds to the Regional Management Division Directors, August 9, 1999.

5) The TMDLs consider seasonal environmental variations.

Seasonal variations involve changes in stream flow and loadings as a result of hydrologic and climatological patterns. In the continental United States, seasonally high flows normally occur in early spring from snow melt and spring rain, while seasonally low flows typically occur during the warmer summer and early fall drought periods.

Bacteria loadings also change during the year based on crop cycles, waste application rates, vegetative cover and cattle access patterns. Consistent with the discussion regarding critical conditions, the HSPF and GWLF models and TMDL analysis effectively considered seasonal environmental variations through the use of observed weather data over an extended period of time and by modifying waste application rates, crop cycles, and livestock practices.

6) The TMDLs include a margin of safety.

This requirement is intended to add a level of safety to the modeling process to account for any uncertainty. The MOS may be implicit, built into the modeling process by using conservative modeling assumptions, or explicit, taken as a percentage of the WLA, LA, or TMDL. Virginia included an implicit MOS in the bacteria TMDL through the use of conservative modeling assumptions in the determination of bacteria loadings from point sources and the land application of biosolids.

7) There is a reasonable assurance that the TMDLs can be met.

EPA requires that there be a reasonable assurance that the TMDLs can be implemented. WLAs will be implemented through the NPDES permit process. According to 40 CFR 122.44(d)(1)(vii)(B), the effluent limitations for an NPDES permit must be consistent with the assumptions and requirements of any available WLA for the discharge prepared by the state and approved by EPA. Furthermore, EPA has authority to object to issuance of an NPDES permit that is inconsistent with WLAs established for that point source.

Nonpoint source controls to achieve LAs can be implemented through a number of existing programs such as Section 319 of the CWA, commonly referred to as the Nonpoint Source Program. The current property owners of the Allied Signal Site are working with EPA Removal section to remove historic metals contamination from the site. It is believed that this work will help alleviate the benthic impairment on Peak Creek.

8) The TMDLs have been subject to public participation.

During the development of the TMDLs for the Peak Creek watershed, public involvement was encouraged through several meetings to discuss and disseminate the Peak Creek TMDLs. A basic description of the TMDLs process and the agencies involved was presented at a kickoff meeting on May 29, 2003 at the Dublin Library in Dublin, Virginia with 24 people in attendance. The first public meeting was held on September 30, 2003 at the Pulaski

Town Hall in Pulaski, Virginia with thirteen people in attendance. A "Field Day" was offered on November 18, 2003 to all stakeholders in the Back Creek, Crab Creek, and Peak Creek watershed areas. Nine people attended the "Field Day." The final model simulations and the TMDL load allocations were presented during the final public meeting on March 17, 2004 at the New River Valley Competitiveness Center in Radford, Virginia. Twenty-five people attended the final public meeting. The first and final public meetings were both noticed in the Virginia Register and open to a thirty-day public comment period. Written comments were received and responded to by VADEQ.

Summary Final Report

Virginia Stormwater Program Review, September 2011

U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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April 20, 2012

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Special Note

Staff and contractors of Region III of the U.S. Environmental Protection Agency (EPA) performed a review of Virginia's construction and municipal stormwater management programs, as discussed in this document, in late September 2011. At that time, Virginia's Department of Conservation and Recreation (VDCR), the agency responsible for implementing the state's construction and municipal stormwater programs, was in a period of transition. Several senior administrative personnel had recently retired, and the program was in the process of making reorganizational changes in response to these and other factors.

VDCR staff recommended that EPA Region III perform its review of Virginia's construction and municipal stormwater programs after the reorganizational changes were complete and staff vacancies were filled to gain a better understanding of the programs' operations. EPA, however, opted to perform its review in September 2011 for several reasons: EPA viewed the timing as an opportunity to assist and perhaps inform VDCR in its reorganization; and given the critical timing with respect to Phase II Watershed Implementation Development, reissuance of the Phase I Municipal Separate Storm Sewer System (MS4) permits, and implementation of the Commonwealth's new stormwater regulations, delaying the review seemed impractical. EPA Region III has oversight responsibility for Virginia's construction and stormwater management programs under the federal Clean Water Act.

VDCR has indicated to EPA Region III subsequent to the September 2011 review that they have their new program management structure/team in place, and they have begun rolling out the revised construction-related regulations even though those regulations are not required to be fully implemented until 2014. VDCR also reports that coordination between VDCR's central office and regional offices is a focus of the new management.

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Contents

1.	Executive Summary	1
2.	Introduction	1
	2.1 Purpose of Effort	1
	2.2 Background	2
	2.3 Basic Structure of Virginia's Stormwater Programs	3
3.	Program Review Approach	3
4.	Observations and Recommendations: Construction Stormwater Program	4
	4.1 Overall	4
	4.2 Facility Universe	6
	4.3 Permitting Activities	7
	4.4 Compliance and Enforcement Activities	8
	4.5 Data Management	12
	4.6 Regulations, Policies, and Guidance	12
	4.7 Training, Education, and Outreach	12
	4.8 Oversight of Regional Offices	14
5.	Observations and Recommendations: MS4 Stormwater Program	14
	5.1 Facility Universe	15
	5.2 Permitting Activities	15
	5.3 Compliance and Enforcement Activities	16
	5.4 Data Management	16
	5.5 Training, Education, and Outreach	16
6.	Summary of Observations and Recommendations	17
	6.1 Capacity and Funding	17
	6.2 Program Modifications	18
	6.3 Construction General Permit and Post-Construction BMPs	19
	6.4 MS4 General and Individual Permits	19
	6.5 Facility Universe and Data Management	19
	6.6 Compliance Protocols	21
	6.7 Enforcement Protocols	22
	6.8 Communication and Training	22



Appendices

Appendix A: Advance Review Questionnaire	. A-1
Appendix B: Attendance List Central Office Visit	. B-1
Appendix C: Attendance List Richmond Regional Office Visit	. C-1
Appendix D: Attendance List Suffolk Regional Office Visit	. D-1
Appendix E: Attendance List: Warrenton Regional Office Visit	. E-1



1. Executive Summary

This report includes observations and several recommendations to enhance the operations of Virginia's construction stormwater program and municipal separate storm sewer system (MS4) program. The review team found several positive attributes about the programs. Staff are committed and knowledgeable, and regional office (RO) staff members have developed positive working relationships with staff of local erosion and sediment control programs. The central office (CO) maintains an up-to-date record of the universe of facilities being regulated under the construction and MS4 programs. The CO has a written enforcement policy and provides training related to the enforcement policy on at least an annual basis. The CO and ROs collectively track compliance and enforcement activities under the construction program, and the CO reviews all annual reports received under the MS4 program and follows up on those not received on a timely basis.

The review team also found a number of limitations associated with Virginia's programs. The most significant of these are the need to eliminate the Phase I MS4 permit backlog, improved compliance policies for the MS4 program, funding and staffing issues, the need to prepare for the implementation of the new provisions of the state stormwater regulations, and the need for post-construction best management practice (BMP) management and training. Tracking and prioritization mechanisms for implementing, managing, and enforcing the construction stormwater program are inadequate in the CO and ROs due to funding and staffing limitations. The review team stresses the need for enforceable Phase I MS4 permits and a Phase II general MS4 permit. Protocols for consistent management of the MS4 program, including tracking and enforcement, are generally lacking in the CO. The state's current development of a web-based DCR e-Permitting System will help address some of the aforementioned issues.

2. Introduction

With assistance from PG Environmental, LLC (PG), the U.S. Environmental Protection Agency (EPA) Region III office conducted a review of the Virginia Department of Conservation and Recreation's (VDCR) construction and municipal stormwater programs on September 19–20, 2011, and September 27–29, 2011. EPA and VDCR also met in a follow-up meeting on December 9, 2011 for the purpose of clarifying findings and discussing follow-up actions. This summary report describes the observations generated by this program review.

2.1 Purpose of Effort

EPA conducts periodic reviews of state programs as part of its oversight responsibilities under the Clean Water Act (CWA). EPA also discusses program goals and objectives with authorized states as part of annual CWA section 106 grant negotiations. Generally, EPA's program reviews have not included substantive discussions about stormwater. EPA Region III aims to integrate stormwater into the annual review process over time. This report describes the observations associated with the Virginia (VDCR) program review.

¹ EPA awards section 106 grants to CWA-authorized states on an annual basis (subject to congressional appropriations).



The intent of the review is to support development of a DCR-authored Management Plan to address notable short-comings in the program. That Plan is being released concurrently with this Final Report.

2.2 Background

Virginia is authorized to administer the CWA's National Pollutant Discharge Elimination System (NPDES) program (33 U.S.C. § 1251 *et seq.*). Initially, the Virginia Department of Environmental Quality (VDEQ) administered the NPDES program, while the VDCR oversaw the state's erosion and sediment (E&S) control program. The two departments were realigned in 2005. VDEQ is now responsible for wetlands, NPDES industrial facilities and wastewater treatment plants, and the Total Maximum Daily Load (TMDL) development program. VDCR is responsible for oversight of the local E&S control programs, stormwater management, NPDES construction and municipal stormwater control, nonpoint source control, nutrient management and elements of the Chesapeake Bay Preservation Act. EPA authorized the DCR to administer NPDES permits in January 2005.

The Virginia Stormwater Management Program (VSMP) is governed by the CWA and the Virginia Stormwater Management Act (§§ 10.1–603.1 *et seq.*) and implementing regulations (4 VAC 50-60-10 *et seq.*). VDCR is authorized to undertake enforcement actions under the VSMP program pursuant to Virginia Code §10.1-603.2:1.

The Virginia Erosion and Sediment Control Law and attendant regulations establish 19 minimum technical criteria (see sidebar) for certain landdisturbing activities greater than 10,000 square feet while VSMP regulations require permit coverage for construction activities one acre and greater. ² In part, VDCR implements its stormwater control requirements through the VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR 10). VDCR implements postdevelopment stormwater requirements in conjunction with the VAR 10 permit. Recent regulatory efforts have modified the existing postdevelopment design criteria found in the regulations; these modified criteria are to be implemented in coordination with the renewed VAR 10 permit.

In addition to the above, the VSMP permit regulations require that construction activities that result in a land disturbance of greater than or equal

VDCR's Minimum Standards and Specifications for E&S Control

- 1. Soil Stabilization
- 2. Soil Stockpile Stabilization
- 3. Permanent Stabilization
- 4. Sediment Basins and Traps
- 5. Stabilization of Earthen Structures
- 6. Sediment Traps and Sediment Basins
- 7. Cut and Fill Slopes Design and Construction
- 8. Concentrated Runoff Down Slopes
- 9. Slope Maintenance
- 10. Storm Sewer Inlet Protection
- 11. Stormwater Conveyance Protection
- 12. Work in Live Watercourse
- 13. Crossing Live Watercourse
- 14. Regulation of Watercourse Crossing
- 15. Stabilization of Watercourse
- 16. Underground Utility Line Installation
- 17. Vehicular Sediment Tracking
- 18. Removal of Temporary Measures
- 19. Stormwater Management

to one acre, or equal to or greater than 2,500 square feet, in all areas within jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management

² Virginia Register, Volume 27, Issue 26, effective September 13, 2011.



regulations, which were adopted pursuant to the Chesapeake Bay Preservation Act, ³ meet state erosion and sediment control and stormwater management requirements. At this time, VDCR does not issue any individual construction stormwater permits; it does, however, have the authority to require individual permits under the VSMP regulations at 4 VAC 50-60-410.

2.3 Basic Structure of Virginia's Stormwater Programs

VDCR consists of a central office (CO) and seven regional offices (ROs)—Abingdon, Christiansburg, Richmond, Staunton, Suffolk, Tappahannock, and Warrenton. Both the CO and the ROs play key roles in implementing Virginia's stormwater programs. The CO develops the policies, regulations, and guidance associated with the construction and MS4 programs; it also writes and issues the VSMP permits. The ROs perform the day-to-day implementation tasks associated with the construction stormwater program, such as inspections and oversight. The ROs do not have direct responsibility for any MS4 program-related tasks. VDCR CO staff, however, report that certain RO responsibilities are imperative to implementing the program. CO staff are involved in providing technical assistance to ROs on a daily basis.

3. Program Review Approach

In advance of the on-site meetings, the review team forwarded a questionnaire requesting background information on the program to the state's construction and MS4 CO contacts. A copy of the questionnaire is provided as appendix A to this report. Review team members used VDCR's responses to the questionnaire as the basis for the on-site reviews. Members of the program review team included the following:

- EPA Region III Review Team Members: Andy Dinsmore and Jenny Molloy
- PG Review Team Members: Jan McGoldrick, Max Kuker, and Sarah Look.

The review team met with the program staff of VDCR's CO on September 19–20, 2011 and the Richmond Regional Office (Richland RO) on September 20, 2011. The review team met with program staff of the Suffolk Regional Office (Suffolk RO) on September 27–28, 2011 and the Warrenton Regional Office (Warrenton RO) on September 29, 2011. Attendance lists for the meetings are provided as appendices B through E.

The evaluation of operations at the CO and three ROs consisted of two parts—an interview of stormwater program staff and a brief review of stormwater program files, including general permits, permittee inventories (universe lists), E&S control plans, and compliance and enforcement (C&E) documents. The interview included a discussion with several members of the staff regarding the current status of the program and its daily operations. Various components of the discussions are detailed in the appropriate sections of this report. The file review consisted of examining the files of several stormwater permittees to determine whether the CO and ROs are properly issuing permits, conducting compliance inspections and other reviews, performing enforcement duties where required, and documenting activities based on the state's stormwater program regulations and standard NPDES program procedures.

³ Chesapeake Bay Preservation Act localities are those in Tidewater Virginia, as defined in the Act.



4. Observations and Recommendations: Construction Stormwater Program

The VDCR CO is responsible for developing the regulations, policies, and guidance materials for the program; handling permit fees; issuing individual permits and general permit coverages; processing permit terminations; and conducting enforcement. VDCR's ROs are responsible for day-to-day implementation of the program, which includes technical assistance, inspections, compliance assessment and support, compliance tracking, informal enforcement, and reporting. The stormwater staff of the ROs report to their respective regional managers, who in turn report to an RO operations manager who is located in the CO and reports to the VDCR director. There are no reporting lines between the ROs and the CO stormwater program manager (position described below) nor between the two CO programs (stormwater and RO operations). The RO operations manager and the CO stormwater program manager, however, do meet jointly with their Division Director each week to discuss regulatory issues. They also remain in frequent contact via email and in-house meetings.

4.1 Overall

The CO stormwater program has approximately 4.5 full-time equivalents (FTEs) devoted to the construction stormwater program. The staff includes the stormwater program manager and the stormwater compliance and enforcement manager. The enforcement manager has additional responsibilities beyond the construction stormwater program; however, she spends approximately 50 percent or more of her time on the construction stormwater program. The staff also includes one dedicated contract employee and one FTE. These personnel each spend approximately 75 percent of their time reviewing registrations, processing permit fees, and issuing permits, among other activities. The program includes two additional FTEs who handle C&E activities. Given retirements in the past year and other movements within VDCR, the stormwater program in the CO is down by at least three FTEs.

Staff in the ROs visited (Richmond, Suffolk, and Warrenton) also reported being short of personnel and unable to fill vacancies. The Richmond RO has approximately five FTEs devoted to the construction stormwater program, although some staff members also support programs other than stormwater. The Suffolk RO has one FTE, while the Warrenton RO has two. The ROs each have vacant positions they are unable to fill because of a Department-wide hiring freeze. Two positions in the Suffolk RO have been vacant for more than two years.

Recent amendments to the VSMP regulations require, effective with reissuance of the VSMP general permit in 2014, erosion and sediment control plans and post-development stormwater management plans to be reviewed and approved prior to issuance of VSMP permit coverage. Local governments delegated under the Chesapeake Bay Preservation Act or that have an MS4 permit will be required to develop local programs consistent with these regulatory modifications, whereas other local governments will need to choose whether to develop a local program or have one run by the VDCR. Local programs are to also include inspection, compliance and enforcement activities. The modified regulations intend for local governments to implement construction and post-development stormwater controls that are consistent with those required under VSMP general permit coverage. CO staff noted that they expect to strongly encourage local governments in the latter category to adopt the program. VDCR personnel are in the



process of conducting individual meetings with localities, Planning District Commissions, and Soil and Water Conservation Districts. In November 2011, VDCR mailed a letter and fact sheet on the benefits of local adoption to the state's various localities. VDCR will likely encourage smaller entities that do not have the economies of scale to take on the program to coalesce under some regional authority that does. VDCR will be the responsible entity for implementing the program in any jurisdiction that does not adopt it. CO and RO staff members anticipate additional changes in the stormwater program because of a recent department-wide functional assessment and workforce/staffing review; however, they do not yet know what those changes will be.

One of the key initiatives in the modified Virginia Stormwater Management regulations (4VAR50-60-10 et seq), which became effective September 13, 2011, is to develop partnerships with local governments in implementation of consistent stormwaer regulations. These partnerships are either mandated by state statute (localities that hold MS4 permits and localities located in Tidewater Virginia that implement the Chesapeaka Bay Preservation At) or can be entered into voluntarily. These partnerships will allow for less redundancy and overlap with localities, increased compliance, and facilitated program oversight and enforcement, and they will consolidate the efforts of limited state and local staff.

Changes to the regulations are not due to be fully implemented until 2014. The CO construction stormwater staff are in the process of developing the guidance and other tools to aid local governments in implementing the regulations. From the review team's perspective, there appears to be some uncertainty on the part of CO staff to put an implementation plan in place until after VDCR has finished making its organizational changes. CO capacity limitations also seem to account for some of the delays in this area.

Funding for the VSMP permitting program is primarily from income derived through permit fees. Construction permit fees range from \$200 to \$500, depending on the size and nature of the construction activity. Construction is a market-driven enterprise, which means that funding for the program can be influenced by economic factors beyond the state's control. CO staff reported that the number of construction permits has dropped by about 600 permits a year in the past several years due to national, state, and local economic constraints. Those staff, however, reported that the rate of change, or slope of the decrease, appears to be leveling off.

- **Observation 1:** Even though VDCR is implementing several aspects of the NPDES program, it is not receiving any portion of the state's federal CWA section 106 grant. Those funds are used exclusively by VDEQ.
- **Observation 2:** VDCR is developing a transition plan that spells out how and by whom the various program functions are to be performed from the present day through the time the revised VSMP is transferred to the local governments. Although it is important to have strong regulations and solid permit requirements in place, the construction stormwater program will be only as effective as what the local programs and VDCR are prepared to implement. EPA has concerns for the local capacity and skills to adequately implement the program.



It is critical that VDCR clearly enunciate its expectations of local governments and that the performance standards be high. Local governments need to know they will be evaluated routinely and according to consistent criteria.

VDCR CO noted that a plan for development of the above schedules and implementation issues was in large part dependent upon final regulatory development, which occurred the week prior to EPA's review. In that plan, VDCR identified over 20 areas where it needed to develop guidelines, policies, and outreach materials regarding the modified regulations. Following EPA's program review, VDCR has developed implementation schedules and plans, sent letters to localities that may elect to develop programs, developed a "Frequently Asked Question" document, conducted a webinar for local governments, scheduled a full day training session at the 2012 Environment Virginia conference, conducted employee training, and conducted numerous outreach meetings that continue to be held.

- **Observation 3:** VDCR staff commented that the strength of their new VSMP regulations resides in the post-construction standards. Though deed restrictions will require maintenance of post-construction BMPs, there is still uncertainty over the oversight to ensure long-term accountability for post-construction BMPs.
- **Observation 4:** Post-construction BMPs are more complex than construction BMPs. VDCR is in the process of developing training and certification on this topic, including training for their own staff who can then train local staff. However, this is a critical element that will require a great deal of ongoing vigilance to ensure that site plan reviews, inspections and other program tasks are adequately carried out.
- **Observation 5:** VDCR personnel voiced concern over existing workloads and their ability to fulfill their duties. Limited staff and resources may impede VDCR in effectively implementing and enforcing its latest VSMP regulations. The team fully believes existing department staff their best to implement the program. However, there appears to simply not be enough bodies to perform the required work. Unless VDCR's construction stormwater program is effectively implemented and enforced, its ability to protect water quality is limited. Federal regulations require that approved NPDES states operate programs that are at least as stringent as the applicable CWA requirements. Inadequate program capacity leads to backlogs in activities and thus can have negative implications for public health and the environment. VDCR has a work load analysis in progress; EPA emphasizes the importance of this analysis, and implementation of adequate staffing plans based on the results.

4.2 Facility Universe

VDCR CO staff reported a total of 6,717 current and active construction general permits, including a breakout by RO, as follows:



Current and Active Construction General Permits in							
Virginia by Regional Office							
Abingdon	398	Suffolk	1,004				
Christiansburg	691	Tappahannock	1,086				
Richmond	1,368	Warrenton	1,753				
Staunton	417	Total	6,717				

VDCR presently provides oversight of 162 local E&S control programs. The Agency also directly regulates land disturbing activities on state and federal lands and activities undertaken by utilities, interstate and intrastate pipeline companies, and railroad companies. The ROs manage the day-to-day aspects of the program. Depending on the RO, either one staff member is assigned to manage all of the RO's state and federal projects or, if RO staff members are assigned to different sections of the region, each is responsible for the state and federal projects located in his or her particular section.

The ROs receive monthly land disturbance permit lists from their local governments. Staff in the three ROs reported comparing those reports against information in their own databases to identify potential new permittees. When they find an entity on the local government list but not in their database, they send a letter about the program and owner/operator responsibilities and then they place the site on their schedules to visit. For the Richland RO, those potentially new sites take priority on the inspection schedule. Warrenton RO inspectors indicated that they get to the new sites as they can. Suffolk RO exclusively focuses its inspections on new sites.

• **Observation 6:** The review team finds the state's approach for identifying entities that require general permit coverage logical. Staff review of the materials, however, is inefficient. The process involves the RO inspectors' comparing local government lists to emails and internal Microsoft Word, Access, and Excel documents containing permittee information.

4.3 Permitting Activities

The construction general permit requires covered parties to develop stormwater pollution prevention plans (SWPPs). The SWPPs must be prepared prior to application for permit coverage and the start of construction. They are to be prepared in accordance with good engineering practices and must include an E&S control plan approved under Virginia's E&S control law; a post-construction stormwater management plan; a stormwater pollution prevention plan; and TMDL requirements for impaired streams. The review team requests that VDCR clarify whether the CO or ROs will be responsible for making general permit coverage decisions because the general permit is an NPDES permit, even when the program is delegated to the local governments. (VDCR has responded that the CO will make the ultimate decisions regarding general permit coverage.)

• **Observation 7:** The effective date of the VAR 10 is July 1, 2009, and the expiration date is June 30, 2014. CO personnel expect to begin drafting the new permit in the summer of 2012. EPA expects to "comment upon, object to or make recommendations with respect to the proposed general permit" in keeping with the requirements at 40 CFR 123.44.



• **Observation 8:** There are inconsistencies and inefficiencies in how the RO staff track data associated with the general permittees. Staff in the three ROs visited indicated that they could use guidance in this area. The review team observed that the RO inspectors have developed their own tracking mechanisms using Microsoft Access, Excel, or other similar programs. RO inspectors have to incorporate data from a variety of sources (e.g., CO permit registration system, local government land disturbance reports, inspection reports) to summarize and determine the status of a permittee. Some of the data collected are not current by the time the ROs have access to it or the time to use it. Staff commented on the need for a centralized database so that inspectors can input and review data in real time.

The CO is in the process of developing a centralized tracking system, which the office refers to as the DCR e-Permitting System. This e-Permitting System will allow for communication between the CO, ROs, and local governments. Localities will be able to check and approve registration statements, check financial requirements, and perform other functions. The RO and CO could use the system to issue permits and track inspection, compliance, and enforcement activities. The CO staff members believe the system will improve communication among program players and help solve inefficiencies for and between the ROs and CO.

Other efforts are underway to improve data access by ROs, including a pilot project in the Richland RO using tablets in the field for access to "real time" data, and development of an online Access database so that ROs can have access to new permittee information sooner.

• Observation 9: Based on interviews conducted, it was apparent that some RO staff are unclear on the capabilities of the DCR e-Permitting System and its applicability to their activities. They also are uncertain the system will actually be implemented and, if so, when. The review team recommends that the CO provide details about the DCR e-Permitting System to RO staff. Given the expertise of RO personnel and their role as customers of the system, the review team strongly recommends that the CO actively solicit the RO's participation in designing the system. The team also recommends that the CO seek input from C&E staff in designing the system. There is considerable need for a centralized data system in that realm of the program, and C&E staff could provide useful insights.

4.4 Compliance and Enforcement Activities

The CO compliance and enforcement team has responsibility for the following oversight activities with respect to the ROs: (1) developing guidance for conducting compliance and enforcement activities; (2) training RO staff to conduct activities according to approved guidance, including review of informal enforcement actions; (3) advising RO staff on VDCR's informal enforcement strategy, application of guidance, and legal issues as they arise; (4) conducting compliance auditing to track and record the status of informal enforcement actions through to a "return to compliance;" and (5) compiling and maintaining a public record audit.



The ROs conduct inspections of permittees, provide compliance and technical assistance, undertake informal enforcement (described below), and refer cases to the CO for formal enforcement, among other activities.

• **Observation 10:** Between July 1, 2009 and December 1, 2010, the ROs conducted 3,025 inspections. Staff at each RO visited indicated that the RO's inspection priorities are complaint-driven. Although the review team appreciates that the ROs need to respond to complaints, the review team is concerned that the approach is not water quality-based. Complaint calls are often not related to a water quality problem. The review team recommends that the ROs develop standard operating procedures for prioritizing inspections that emphasize the protection of water quality. The NPDES regulations require that a state program maintain "[a] program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements." (40 CFR 123.26(b)(1)).

VDCR's policies and guidance related to compliance and enforcement are summarized in the *Stormwater Management Enforcement Manual* (DCR VSWCB-012; 02/06). The underlying philosophy of VDCR has been to resolve permit problems by providing compliance assistance and, only if necessary, by taking enforcement actions. Generally, VDCR RO staff conduct inspections and identify noncompliance in (1) inspection reports with verbal warnings, which include deadlines for correcting noncompliance and reinspection dates, or (2) Requests for Information (RFIs; i.e., no permit registration).

Where voluntary compliance is not achieved, the ROs undertake informal enforcement actions, which include issuing Notices of Corrective Action (NOCAs, which are analogous to EPA's Notices of Violation) or Final Requests for Information (i.e., failure to register for permit coverage). If informal action does not result in a return to compliance, the ROs are to refer the case to the CO for formal enforcement action. The CO's enforcement steps include an enforcement meeting with a schedule of compliance and may include an administrative order or court ordered consent decree. The CO C&E staff indicated that when ROs have a permittee that is in significant noncompliance (SNC), they issue a NOCA and refer the case to the CO for formal enforcement. The C&E manager was well aware of EPA's wet weather SNC criteria. Richland RO staff members reported that they typically issue up to three NOCAs before referring a case for formal enforcement.

The CO tracks compliance/noncompliance from the inspection report stage through to resolution (return to compliance or referral to the Office of the Attorney General or EPA). The information is tracked on a spreadsheet. Every month the CO sends a list of cases where some compliance action was taken and requests status updates as well as information on new cases. A permittee is not dropped from the list until it has returned to compliance, either through the ROs' provision of compliance assistance or through informal/formal enforcement actions.

CO C&E staff reported that they expect that the current *Stormwater Management Enforcement Manual* or its update will be used by local governments once local stormwater management plans are approved by the Board.



VDCR reports the following number of informal and formal enforcement actions as having been taken in 2010:

Enforcement Actions in 2010	Office	Number			
Inspections (25% initial inspections; 75% reinspections)	ROs	1,975			
Inspection report/verbal warnings	ROs	1,700 (est.)			
Informal Enforcement					
Requests for Information	ROs	205			
Final Requests for Information	ROs	23			
Notices of Corrective Action	ROs	47			
Formal Enforcement					
Enforcement meetings and compliance schedules	СО	63			
Administrative orders/civil suits	СО	8			
Civil charges and penalties	СО	\$204,498			

The data suggest that VDCR typically identifies problems through its inspections and that the majority of inspections are reinspections. The data also show that most of the compliance problems identified are addressed through informal enforcement activities.

Richland RO staff reported that VDCR has an annual goal of inspecting between 15 to 20 percent of its VSMP permittees. When asked where the goal is stated, the staff members were unsure but thought it had come from a VDCR strategic plan.

• **Observation 11:** Statewide in 2010, VDCR conducted initial inspections at approximately 494 sites (25% of 1,975 inspections), which represents approximately 7.3 percent of the total universe of permittees (494/6,720). The review team strongly encourages VDCR to increase the number of inspections it performs and develop priorities for inspection based on potential water quality impacts. Of the three ROs visited, only the Richland RO is meeting the annual inspection goal. It is inspecting between 25 and 30 percent of its permittee coverages. The Suffolk RO and Warrenton RO are each inspecting approximately 10 percent or less, which staff members stated is due to limited capacity.

In the past five and one-half years, VDCR has had 108 enforcement actions, 20 formal resolutions (consent decrees and consent special orders), and total civil charges and penalties of \$417,548. VDEQ's results under the industrial stormwater program for the same period were 21 formal resolutions and \$201,696. The VDCR C&E manager said, "As can be seen, our compliance and enforcement efforts are exactly in line with VDEQ's program efforts, only we have collected twice as much in civil charges and penalties."

VDCR C&E staff reported the successful completion of three complex litigations in 2010: Hovnanian, Beazer, and HOT Lanes. They indicated that all three cases were resolved in the state's favor and resulted in approximately \$136,000 in civil penalties.



CO enforcement staff indicated that there was a need on the part of the CO and ROs to upload information to a centralized database that would be compatible with current datasets. There are issues with inefficiency between the CO enforcement team and the ROs. The current permit issuance database does not provide real-time information on permit status; each RO provides a monthly status of RFI and NOCA activities, inspection results, and resolutions to the enforcement team. In addition, RO staff members do not have the ability to check the enforcement status of permittees in their jurisdictions; they have to contact the CO enforcement team for the status of an individual case. There is typically a two and one-half week delay in permit coverage issuances and RO updates. CO staff are working toward development of a sequel server tracking system that will allow instantaneous updates to eliminate delays.

- **Observation 12:** The current semi-automated system VDCR uses to track compliance is adequate, yet it reflects an inefficient use of CO and RO stormwater staff time in a program with significant capacity limitations. The review team strongly recommends that the DCR e-Permitting System be designed to accommodate the needs of the compliance and enforcement sides of the program and the needs of CO and RO staff.
- **Observation 13:** Richland RO staff commented that most non-Chesapeake Bay localities do not have water quality as part of their mindsets in their plan review processes. VDCR staff note that they expect this shortcoming will be remedied with implementation of the revised program.

Staff in each of the three ROs evaluated by the review team noted that they had developed positive relationships with most of the localities in their jurisdictions.

- **Observation 14:** There is a perception among some RO staff that there are inconsistencies in how VDCR staff takes informal enforcement actions. Some regional staff asked for additional guidance in this area. CO staff is available to provide guidance as needed and does so routinely. The review team encourages VDCR to conduct regular training to foster consistency among the ROs and to provide guidance as needed.
- **Observation 15:** At the Suffolk RO, Excel Paving Company has failed to apply for permit coverage for three different construction sites. Although Suffolk RO staff members have dealt with the company several times, the contractor has had recurring permit coverage issues. During the review the review team did not see any documentation of enforcement against the contractor in the Suffolk RO's files. If the RO has taken enforcement action, clearly it should have records of such actions in its files. Subsequently VDCR did provide copies of inspection reports, photos and Requests for Information. However, there was still insufficient evidence of either retur to compliance or escalated enforcement. Pursuant to 40 CFR 123.26(a), "State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports)." Moreover, the requirements for compliance evaluation programs under the NPDES regulations at 40 CFR 123.26(b)(1) require states to have "[a] program which is capable of making comprehensive surveys of all facilities and activities subject to the State



Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements." EPA recognizes severe staffing shortages in the Suffolk RO.

• **Observation 16:** Some RO staff have concerns regarding the timeframes applicable to the formal enforcement action process and the guidance applicable to escalating cases for formal enforcement action. The review team encourages the CO to conduct training to ensure that RO staff understands the applicable timeframes, the applicable guidance for escalating cases, and avenues RO staff may employ for additional guidance and information, or both.

4.5 Data Management

The CO currently uses an Access database program to track permit applications, the receipt of permit fees, and the issuance of permits under the construction program. ROs have to call the CO to obtain data from the system. Data entry occurs approximately twice a week. The CO prints full reports from the system for the ROs and a more limited report for the VDCR Director on a bimonthly basis.

As noted earlier in this report, the CO is in the process of developing a centralized tracking system (i.e., DCR e-Permitting System). The alpha version of the program is funded and is scheduled to be completed in August 2012. The beta version is scheduled to be finished 18 months before the construction program is delegated to the local governments.

• **Observation 17:** The review team supports VDCR's efforts to develop the DCR e-Permitting System. State NPDES compliance evaluation programs are required to have procedures for "[m]aintaining a management information system which supports the compliance evaluation activities of this part" (40 CFR 123.26(e)(4)).

4.6 Regulations, Policies, and Guidance

VDCR has developed considerable guidance in support of its stormwater programs. In addition to the *Stormwater Management Enforcement Manual* described in the previous section, VDCR has developed the *Guidance Document on Virginia Stormwater Management Program Site Inspection Strategies* (DCR-VSWCB-024; 3/11). The program has developed other criteria and guidance for regulated parties, including the following: *Virginia Stormwater Management Handbook* ("Blue Book"), *Virginia Erosion and Sediment Control Handbook*, and VSMP Permit Regulations ("Engineer's Toolkit").

4.7 Training, Education, and Outreach

• **Observation 18:** On an annual or biannual basis, CO C&E staff plan, organize, and conduct a day-long compliance and enforcement training session in which CO and RO program staff are expected to participate. The last session was held on June 24, 2010, and the following topics were discussed: EPA's state review framework (SRF), VDCR's ongoing efforts to increase compliance with general permit registration requirements, cases of significant noncompliance, EPA's significant noncompliance wet weather



policy, and evidentiary problems using case studies. CO staff reported that they believe the training sessions should be held twice a year, but budget constraints have made that impossible of late.

CO construction stormwater staff reported that they expect a need for training at the local level given the changes in the state's E&S control laws and with the planned delegation of the program to the local level in 2014. At present, CO staff members do not know who will provide this training or how given the current organizational uncertainties at VDCR.

All three of the ROs visited mentioned that staff would benefit from specialized training. Specific training topics suggested by the RO staff include basic engineering, runoff reduction methods, wetland delineation, emerging technologies, perennial stream determinations, hazardous materials, and Occupational Safety and Health Administration (OSHA) training. Developing the stormwater body of knowledge in the RO would decrease the need for technical guidance from the CO.

Virginia has an Erosion and Sediment Control Training and Certification Program, which is a tool for local and state officials to obtain certain certifications to implement the E&S control program across the state. Staff in the CO stated that the E&S inspectors' module in the program is inadequate and needs to be modified. In addition, staff in the Suffolk RO stated that the regional land disturber program tests for stormwater certification are not challenging enough for the level of understanding needed of VSMP inspectors.



• **Observation 19:** Staff in the Richland RO and Warrenton RO stated that the best way to train localities in stormwater management would be to implement a certification program. Having the ability to decertify inspectors would provide the incentive to maintain an adequate stormwater knowledge base. The review team finds these suggestions valid and encourages VDCR to consider them further, perhaps as part of the transition plan recommended under Observation 2.

4.8 Oversight of Regional Offices

• **Observation 20:** As noted previously, the CO staff have no oversight responsibilities for RO personnel in terms of implementing the construction stormwater program. CO staff members provide policy and some technical guidance but cannot allocate tasks to the ROs due to the organizational structure of the stormwater program. The channels through which RO staffing is funded also have implications for the operations staff can perform. Some RO personnel have responsibilities for programs outside stormwater.

In its recent restructuring, VDCR has created an RO Operations Manager position, which was recently filled. The Operations Manager operates out of the CO, but his role is to create consistencies among the ROs and their interactions with CO staff. Priorities for the Operations Manager are supposedly workload allocation, consistency, and policy. Warrenton RO staff indicated that the Operations Manager plan to visit each RO on a monthly basis. In the past, communication between the CO stormwater program and ROs was facilitated through a monthly conference call. Staff in the Warrenton RO stated that the monthly conference calls recently stopped (July 2011). (VDCR CO staff commented subsequent to the review that the retirements of program management staff (see "Special Note" at the outset of the document) occurred at this time. The conference calls resumed in September 2011 and have occurred on a bi-monthly basis since then.)

The review team recommends that the CO stormwater program manager and the compliance and enforcement manager work closely with the new manager of the ROs to ensure his or her understanding of the construction stormwater program on an ongoing basis. (VDCR CO staff reported subsequent to the review that these meetings are in fact occurring on a weekly basis.)

5. Observations and Recommendations: MS4 Stormwater Program

Virginia relies on state statutes and regulations to establish minimum standards and expectations for MS4 permit operators. VDCR is responsible for the issuance, denial, revocation, termination, and enforcement of individual and general VSMP permits for the control of stormwater discharges from MS4s. The MS4 program is managed and implemented by the CO only; the ROs do not have MS4 program-related responsibilities. Therefore, there are no observations relative to the ROs in the discussion below.



5.1 Facility Universe

VDCR reported having 11 Phase I MS4 individual permits and 91 Phase II MS4 general permit enrollees. The Phase I permittees are split almost evenly in that six are cities and five are counties. The distribution of the 91 Phase II permittees is as follows: 36 cities, 15 counties, 29 schools/universities/hospitals, 3 transportation agencies, and 19 federal facilities.

VDCR plans to review the 2010 Census data to determine the new universe of potentially regulated areas and to identify any additional MS4s that might need coverage.

By reviewing available federal property maps VDCR has identified several federal facilities that do not have MS4 permit coverage but may require it. Many other federal facilities lie outside most recent urbanized area data and do not. The list does not include National Wildlife Refuges or federal facilities covered under industrial stormwater permits. VDCR CO staff reported subsequent to this review that they are in the process of establishing a partnership between VDCR, VDEQ, and federal facilities.

• **Observation 21:** VDCR staff reported having difficulties in getting some federal facilities to acknowledge their responsibilities. It is recommended that VDCR staff keep EPA informed of these issues so that EPA can intervene if necessary.

5.2 Permitting Activities

The current Phase II MS4 general permit was issued in 2008 and expires in 2013. CO staff report that the 2013 general permit will likely include technical criteria, local program criteria, state projects, general requirements, permit applications, and permit conditions. It will include requirements for consistency with other laws and regulations, including E&S control. It possibly could include requirements for impaired waters and waters with approved TMDLs, procedures for permit termination and transfers of permit coverage, natural resource protection consideration, monitoring processes, amendments to forms, and amendments to MS4 program plan requirements. EPA notes that these are minimum requirements it would expect to see in the new permit.

The VDCR stormwater program manager stated his sincere desire to rewrite the Phase I permits. He is experiencing difficulty communicating with the Phase I entities since EPA has taken enforcement action against a number of them. Phase I representatives will not talk to VDCR staff on the advice of their attorneys. VDCR hopes to lead the permit renewal process with an MS4 in northern Virginia.

• **Observation 22:** The review team strongly urges the state to develop and issue meaningful and enforceable Phase I individual permits and a Phase II general permit with conditions consistent with MS4 program goals and TMDL requirements. Moreover, EPA expects to "comment upon, object to or make recommendations with respect to the proposed general permit" in keeping with the requirements at 40 CFR 123.44.



The VDCR staff expect resistance as they move forward with revising the Phase I and Phase II MS4 permits. The municipalities tend to work as a bloc when negotiating with VDCR. The development community has deep roots and a history in regulatory activities. Surprisingly, there is little involvement in the stormwater program by environmental organizations. VDCR staff stated that the Phase II MS4 general permit does not provide coverage for municipalities that own or operate facilities with industrial activities. Such municipalities would be required to have industrial stormwater permits.

5.3 Compliance and Enforcement Activities

• Observation 23: VDCR staff do not generally conduct inspections of the permitted MS4s. Compliance and enforcement activities appear limited to review of annual reports and some associated follow-up visits. In 2010, VDCR issued 23 RFIs. The RFIs were for annual reports not being submitted on time. The review team urges VDCR to inspect its MS4s. State NPDES compliance evaluation programs are required to have procedures and ability for "(2)[i]nitial screening... of all permit... information to identify violations and to establish priorities for further substantive technical evaluation; (3) when warranted, conducting a substantive technical evaluation following the initial screening of all permit... compliance information to determine the appropriate agency response." (40 CFR 123.26(e)). Inspections provide one of the means through which states conduct initial screening.

Both Phase I and II MS4s have annual report requirements. CO staff reported that they would like to improve the format and requirements for these reports. Specifically, they would like to limit the Phase I MS4s to reporting key details (no more than two pages per section). Currently, the Phase I MS4s are providing considerable narrative, which tends to bury or obscure their true actions. CO staff would like to provide specific guidance to the Phase II MS4s because they tend not to provide enough detail in their reports.

• **Observation 24:** The review team supports VDCR's efforts to update its annual report forms. The team urges VDCR to implement these actions soon—even before the next permit cycle. EPA suggests that VDCR evaluate EPA's MS4 Report Form.

CO staff review the annual reports submitted by the Phase II MS4s by comparing them to the entity's MS4 program plan.

5.4 Data Management

• **Observation 25:** Currently, CO staff use tables in Microsoft Access to track the MS4 programs. They also need to determine how they will work with the watershed implementation plans for the Chesapeake Bay. The review team recommends that the CO develop a system accessible to the ROs for tracking MS4 permitting program elements.

5.5 Training, Education, and Outreach

• **Observation 26:** CO staff indicated that the majority of Phase II MS4s are not adequately reporting, therefore it is difficult to determine if permit requirements are being met. The CO thus has to take additional steps to ensure that each MS4 achieves



compliance. The review team recommends that VDCR establish training and outreach objectives with its Phase II MS4s in order to educate them about the Department's expectations and to ultimately improve their compliance with MS4 program plan requirements. The review team believes this Observation underscores the importance of VDCR's having enforceable MS4 permit and program plan requirements.

The CO handles all MS4-related tasks. CO staff reported, however, that the VDCR realignment process could result in some of the MS4 program duties being transferred to the ROs. The staff expressed concern regarding how the ROs would be able to get up to speed on the program quickly enough given capacity limitations and other factors.

• **Observation 27:** Should VDCR decide to decentralize implementation of the MS4 program, the review team recommends the development of a transition plan specifying the roles and responsibilities for the program going forward. The transition plan should specify how those responsible for implementation will receive the training and resources they need to function effectively.

6. Summary of Observations and Recommendations

Listed below are the primary observations and recommendations resulting from the evaluation of Virginia's stormwater program. For more specific information pertaining to each comment, please refer to the cited sections of the report. Please note that not all observations have recommendations.

6.1 Capacity and Funding

- Regarding funding designation for the state's stormwater programs. Even though VDCR is implementing several aspects of the NPDES program, it is not receiving any portion of the state's federal CWA section 106 grant. Those funds are used exclusively by VDEQ. (Observation 1, Section 4.1, Overall)
- Regarding issues relating to lack of capacity in the CO and ROs. VDCR personnel voiced concern over existing workloads and their ability to fulfill their duties because of understaffing. Limited staff and resources may impede VDCR in effectively implementing and enforcing its latest VSMP regulations. The team fully believes existing department staff try their best to implement the program. However, there appears to simply not be enough bodies to perform the required work. Unless VDCR's construction stormwater program is effectively implemented and enforced, its ability to protect water quality is limited. Federal regulations require that approved NPDES states operate programs that are at least as stringent as the applicable CWA requirements. Inadequate program capacity leads to backlogs in activities and thus can have negative implications for public health and the environment. (Observation 5, Section 4.1, Overall)
- Regarding impacts to training due to funding and capacity issues. On an annual or biannual basis, CO C&E staff plan, organize, and conduct a day-long compliance and enforcement training session in which CO and RO program staff are expected to participate. CO staff reported that they believe the training sessions should be held twice



a year, but budget constraints have made that impossible of late. (**Observation 19**, **Section 4.7**, **Training, Education, and Outreach**)

• Regarding staffing and capacity issues relating to the state's compliance activity responsibilities. Statewide in 2010, VDCR conducted initial inspections at approximately 494 sites (25% of 1,975 inspections), which represents approximately 7.3 percent of the total universe of permittees (494/6,720). The review team strongly encourages VDCR to increase the number of inspections it performs and develop priorities for inspection based on potential water quality impacts, as recommended under Observation 10. At present, VDCR is not meeting its own inspection goal in some ROs (those that are understaffed). Of the three ROs visited, only the Richland RO is meeting the annual inspection goal. The Suffolk RO and Warrenton RO are each inspecting approximately 10 percent or less, which staff stated is due to limited capacity. (Observation 12, Section 4.4, Compliance and Enforcement Activities)

6.2 Program Modifications

- Regarding the need to prepare for changes to construction stormwater program. The review team is concerned that VDCR does not yet have a transition plan in place that spells out how and by whom the various program functions are to be performed from the present day through the time the program is transferred to the local governments. The review team strongly encourages VDCR to immediately develop a transition plan that addresses such questions as the following (Observation 2, Section 4.1, Overall):
 - How will local governments be encouraged and prepared to adopt the program? Will an outreach campaign be initiated? Over what time frame will it be pursued?
 - What criteria will be used to evaluate whether a local program will be approved to implement the program? Over what time frame?
 - o What oversight activities will VDCR perform to ensure that approved local government programs are performing adequately? What will the frequency of those activities be?
 - What happens if there is no local program? Who is going to do what and when?
- Regarding the preparation for changes to delegation of MS4 stormwater program responsibilities. The CO handles all MS4-related tasks. CO staff reported, however, that the VDCR realignment process could result in the MS4 program being transferred to the ROs for day-to-day implementation. The staff expressed concern regarding how the ROs would be able to get up to speed on the program quickly enough given capacity limitations and other factors. Should VDCR decide to decentralize implementation of the MS4 program, the review team recommends the development of a transition plan specifying the roles and responsibilities for the program going forward. The transition plan should specify how those responsible for implementation will receive the training on other elements of the MS4 program other than construction in which they are well-



qualified) and resources they need to function effectively. (Observation 28, Section 5.5, Training, Education, and Outreach)

6.3 Construction General Permit and Post-Construction BMPs

- Regarding the development and issuance of the new construction general permit. The effective date of the VAR 10 is July 1, 2009, and the expiration date is June 30, 2014. CO personnel expect to begin drafting the new permit in the late summer/early fall of 2012. EPA expects to "comment upon, object to or make recommendations with respect to the proposed general permit" in keeping with the requirements of 40 CFR 123.44. (Observation 7, Section 4.3, Permitting Activities)
- Regarding preparation for post-construction BMP management. VDCR staff commented that the strength of their new VSMP regulations resides in the post-construction standards. The review team believes VDCR needs to indicate who is going to be responsible for ensuring the integrity/continued maintenance of post-construction BMPs once a permit ends. (Observation 3, Section 4.1, Overall)
- Regarding training for post-construction BMP management. Post-construction BMPs are more complex than construction BMPs, and they require ongoing oversight periods.
 VDCR needs to place particular emphasis on this issue in their training strategy for RO staff and local governments in performing post-construction reviews. RO staff interviewed noted that local governments often do not have staff with the skill sets needed to perform construction stormwater reviews, much less post-construction examinations. (Observation 4, Section 4.1, Overall)

6.4 MS4 General and Individual Permits

- Regarding the development and issuance of new Phase I and Phase II MS4 permits. The review team strongly urges the state to develop and issue meaningful and enforceable Phase I individual permits and a Phase II general permit with conditions consistent with MS4 program goals and TMDL requirements. Moreover, EPA expects to "comment upon, object to or make recommendations with respect to the proposed general permit" in keeping with the requirements at 40 CFR 123.44. (Observation 23, Section 5.2, Permitting Activities)
- Regarding federal facilities and MS4 coverage. VDCR has identified several federal facilities that do not have MS4 permit coverage by reviewing available federal properties maps. VDCR staff reported sometimes having difficulties in getting some federal facilities to acknowledge their responsibilities. It is recommended that VDCR staff keep EPA informed of these issues so that EPA can intervene if necessary. (Observation 22, Section 5.1, Facility Universe)

6.5 Facility Universe and Data Management

• Regarding the VDCR data sources for tracking permittees. The review team finds the state's approach for identifying entities that require general permit coverage logical. Staff



review of the materials, however, is inefficient. The process involves the RO inspectors comparing local government lists to emails and internal Microsoft Word, Access, and Excel documents containing permittee information. (**Observation 6, 4.2, Facility Universe**)

- Regarding the state's tracking mechanisms for managing VSMP permittee responsibilities. There are inconsistencies and inefficiencies in how the RO staff track data associated with the general permittees. Staff in the three ROs visited indicated that they could use guidance in this area. The review team observed that the RO inspectors have developed their own tracking mechanisms using Microsoft Access, Excel, or other similar programs. RO inspectors have to incorporate data from a variety of sources to summarize and determine the status of a permittee. Some of the data collected is not current by the time the ROs have access to it or the time to use it. Staff commented on the need for a centralized database so that inspectors can input and review data in real time. (Observation 8, Section 4.3, Permitting Activities)
- Regarding the development of the DCR e-Permitting System. Based on interviews conducted, it was apparent that some RO staff are unclear on the capabilities of the DCR e-Permitting System and its applicability to their activities. They are also uncertain the system will actually be implemented and, if so, when. The review team recommends that the CO provide details about the system to RO staff. Given the expertise of RO personnel and their role as customers of the system, the review team strongly recommends that the CO actively solicit the RO's participation in designing the system. The team also recommends that the CO seek input from C&E staff in designing the system. There is considerable need for a centralized data system in that realm of the program, and C&E staff could provide useful insights. (Observation 9, Section 4.3, Permitting Activities)
- Regarding the lack of input from all entities that are to use the DCR e-Permitting System. The current semi-automated system VDCR uses to track compliance is adequate, yet it reflects an inefficient use of CO and RO stormwater staff time in a program with significant capacity limitations. The review team strongly recommends that the DCR e-Permitting System be designed to accommodate the needs of the compliance and enforcement sides of the program and the needs of CO and RO staff. (Observation 12, Section 4.4, Compliance and Enforcement Activities)
- Regarding the state's responsibilities under its NPDES permit for compliance activities. The review team supports VDCR's efforts to develop the DCR e-Permitting System. The team encourages the Department to identify a mechanism for getting a knowledgeable stormwater program person into the position to oversee development of the system and ensure its ultimate utility to the program. State NPDES compliance evaluation programs are required to have procedures for "[m]aintaining a management information system which supports the compliance evaluation activities of this part" (40 CFR 123.26(e)(4). (Observation 18, Section 4.5, Data Management)
- Regarding tracking resources in MS4 program. Currently, CO staff use tables in Microsoft Access to track the MS4 programs. The staff intend to have a module in the



DCR e-Permitting System to track BMPs and C&E activities, but not other MS4 permitting program elements. The CO staff also need to determine how they will work with the watershed implementation plans for the Chesapeake Bay. The review team recommends that the CO develop a database system accessible to ROs for tracking MS4 program elements. (**Observation 25, Section 5.4, Data Management**)

6.6 Compliance Protocols

- Regarding the state's strategies for construction stormwater compliance activities. Between July 1, 2009 and December 1, 2010, the ROs conducted 3,025 inspections. At each RO visited, staff indicated that the RO's inspection priorities are complaint-driven. Although the review team appreciates that the ROs need to respond to complaints, the team is concerned that the approach is not water quality-based. The review team recommends that the ROs develop standard operating procedures for prioritizing inspections that emphasize the protection of water quality. (Observation 10, Section 4.4, Compliance and Enforcement Activities)
- Regarding the inconsistencies of the stormwater program in localities across the state. Richland RO staff commented that most non-Chesapeake Bay localities do not have water quality as part of their mindsets in their plan review processes. They believe that the extent to which water quality is considered is a result of their presence in the field. This Observation further argues for VDCR RO staff to increase their inspection frequency and thus their presence in the field. (Observation 13, Section 4.4, Compliance and Enforcement Activities)
- Regarding the compliance activity schedule for the state's MS4 permittees. VDCR staff do not generally conduct inspections of the permitted MS4s. Compliance and enforcement activities appear limited to review of annual reports. In 2010, VDCR issued 23 RFIs. The RFIs were for annual reports not being submitted on time. The review team urges VDCR to inspect its MS4s. Inspections provide one of the means through which states conduct initial screening. (Observation 23, Section 5.3, Compliance and Enforcement Activities)
- Regarding the methods in which the state monitors the compliance of its MS4 permittees. Both Phase I and II MS4s have annual report requirements. CO staff reported that they would like to improve the format and requirements for these reports. Specifically, they would like to limit the Phase I MS4s to reporting key details (no more than two pages per section). Currently, the Phase I MS4s are providing considerable narrative, which tends to bury or obscure their true actions. CO staff would like to provide specific guidance to the Phase II MS4s because they tend not to provide enough detail in their reports. The review team supports VDCR's efforts to update its annual report forms. The team urges VDCR to implement these actions soon—even before the next permit cycle. EPA suggests that VDCR consider EPA's MS4 annual report form. (Observation 24, Section 5.3, Compliance and Enforcement Activities)



6.7 Enforcement Protocols

• Regarding the timeframes for enforcement actions. Some RO staff have concerns regarding the timeframes applicable to the formal enforcement action process and the guidance applicable to escalating cases for formal enforcement action. The review team encourages the CO to conduct additional training to ensure that RO staff understands the applicable timeframes, the applicable guidance for escalating cases, and avenues RO staff may employ for additional guidance and information, or both. EPA recommends that any, new additional DCR enforcement strategies involving the new construction regulations be developed prior to their implementation. (Observation 14, Section 4.4, Compliance and Enforcement Activities)

6.8 Communication and Training

- Regarding training for local inspectors. Staff in the Richland RO and Warrenton RO stated that the best way to train localities in stormwater management would be to implement a certification program. Having the ability to decertify inspectors would provide the incentive to maintain an adequate stormwater knowledge base. The review team finds these suggestions valid and encourages VDCR to consider them further, perhaps as part of the transition plan recommended under Observation 2. (Observation 19, Section 4.7, Training, Education, and Outreach)
- Regarding communication with new Regional Office Operations Management. The CO staff have no oversight responsibilities for RO personnel in terms of implementing the construction stormwater program. VDCR has just established new protocols for RO/CO communication. The review team recommends that the CO stormwater program manager and the compliance and enforcement manager continue to work closely with the new manager of the ROs to ensure his or her understanding of the construction stormwater program on an ongoing basis. (Observation 20, Section 4.8, Oversight of Regional Offices)
- Regarding the state's procedures for enforcing the MS4 program requirements. CO staff indicated that the majority of Phase II MS4s are not completing all the requirements in their MS4 program plans. Some of the compliance issues are due to economic conditions in the municipalities and others are due to the municipality failing to report the correct information. The CO thus has to take additional steps to ensure that each MS4 is achieving compliance. The review team recommends that VDCR establish training and outreach objectives with its Phase II MS4s in order to educate them about the Department's expectations and to ultimately improve their compliance with MS4 program plan requirements. The review team believes this Observation underscores the importance of VDCR's having enforceable MS4 permit and MS4 program plan requirements. (Observation 26, Section 5.5, Training, Education, and Outreach)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

MAR 2 8 2013

Mr. Richard Weeks, Acting Director Division of Stormwater Management Virginia Department of Conservation and Recreation 900 East Main Street, 8th Floor Richmond, Virginia 23219

Re: Specific Objection to Prince William County Phase I Municipal Separate Storm Sewer System (MS4) Permit VA0088595

Dear Mr. Weeks:

On February 27, 2013, the U. S. Environmental Protection Agency (EPA or the Agency), received a draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Prince William County permit), with a revised draft submitted March 19, 2013. EPA has reviewed this permit pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between EPA Region III and the Virginia State Water Control Board (1975) (as well as subsequent agreements).

In March 2013, EPA requested additional information from the Virginia Department of Conservation and Recreation (DCR) and provided comments on the draft permit. On March 28, 2013, EPA issued a time extension letter to increase the Agency's review time to 90 days, since we had reason to believe that the comments would not be addressed within the initial 30-day review period. EPA, DCR and the Virginia Department of Environmental Quality (DEQ) are currently in discussions on these issues. While EPA and DCR have agreed in principle on the resolution of several issues, one major issue remains -- clarification of the roles of Prince William County and the Virginia Department of Transportation (VDOT) in meeting the permit requirements. Since these discussions are ongoing and the 90-day review period will expire on May 28, 2013, EPA is issuing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A.2 of the MOA. As further explained herein, EPA believes that the Prince William County permit fails to incorporate several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. (CWA), and its implementing regulations.

EPA's objection to the draft permit and identification of revisions that are needed before EPA can remove the objection, see 40 C.F.R. § 123.44(b)(2)(ii), are described below:

1. MS4 Permit Coverage

The current draft permit only applies to "discharges to surface waters from the Municipal Separate Storm Sewer System (MS4) owned or operated by the County of Prince

William" (as well as two categories of co-mingled discharges). As written, the permit does not provide authorization for discharges of pollutants from property owned or operated by VDOT with that MS4. EPA believes this lack of NPDES permit coverage for VDOT in this draft permit is based on DCR's assumption that VDOT's discharges will be covered under the state's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4 GP) (to be effective July 1, 2013). However, as EPA noted in its March 26, 2013 letter withdrawing the Agency's objection to the MS4 GP, and reiterated below, EPA has concerns that the terms and conditions of the general permit may not be sufficient to protect water quality or provide adequate authority for VDOT discharges in Prince William County.

In support of EPA's concerns about the lack of adequate authorization for discharges from VDOT property located within Prince William County MS4, Agency regulations require MS4 permit coverage for all discharges from MS4s systems located in identified large and medium MS4s jurisdictions. See 40 C.F.R. § 122.26(a)(3)(i). The regulations provide several options for how those permits may be structured, including the issuance of "one system-wide permit covering all discharges from [MS4s] within a large or medium municipal storm sewer system" or by issuing "distinct permits for appropriate categories of discharges within a large or medium [MS4]". See 40 C.F.R. § 122.26(a)(3)(ii). Further, the federal regulations specify that the definition of MS4 includes, inter alia, "roads with drainage systems" and "municipal streets" that are "[o]wned or operated by a State . . . or other public body." 40 C.F.R. § 122.26(b)(8)(i-ii). This definition explicitly encompasses properties owned and operated by state departments of transportation such as those of VDOT in Prince William County.

Moreover, the Preamble to the EPA Phase I Rule for Stormwater Discharges supports the need for VDOT facilities within Prince William County to receive explicit coverage under that permit. In the Preamble, EPA explains that one purpose of the regulations is to resolve issues associated with MS4 dischargers not having the legal authority to implement land use controls (e.g., DOTs) or not having ownership of conveyances (e.g., localities in instances where DOTs own conveyances). See 55 Fed. Reg. 47990 (November 16, 1990). Further, from a policy perspective, requiring Phase I MS4 coverage for all VDOT-owned conveyances within Prince William County would minimize confusion over conveyance ownership since the Phase I permit would cover all such conveyances in the MS4.

In order to resolve this portion of our objection for the Prince William MS4 permit, as well as EPA's concerns regarding VDOT authorization to discharge in the other ten Phase I MS4s in Virginia, EPA has offered Virginia the following options for extending Phase I MS4 permit coverage to VDOT facilities and conveyances located within Phase I MS4 jurisdictions:

 DCR may issue VDOT 11 individual Phase I MS4 permits covering its activities including the discharge of pollutants within each traditional Phase I MS4 jurisdiction within the state;

¹ The Permit also applies to "Non-stormwater discharges and stormwater discharges associated with industrial activity (defined at 9 VAC 25-31-10) that are authorized by a separate Virginia Pollutant Discharge Elimination System (VPDES) permit; [and] [d]ischarges from construction activities that are regulated under the Virginia Stormwater Management Program (VSMP) (4VAC 50-60-10 et. seq.) and authorized by a separate VSMP Permit. . . ."

- DCR may issue VDOT one individual Phase I MS4 permit covering its systems for all areas of the Commonwealth state-wide that are located within Phase I MS4 jurisdictions. Under this option, DCR would still need to issue separate Phase II MS4 General Permit coverage for VDOT conveyances outside Phase I jurisdictions;
- 3. DCR may deem VDOT a Phase I MS4 co-permittee along with the traditional municipality (e.g., County) in each of the Phase I jurisdictions. Under this option, DCR would still need to issue separate Phase II MS4 General Permit coverage for VDOT conveyances outside Phase I jurisdictions; or
- 4. DCR may issue one individual Phase I MS4 permit that covers all VDOT conveyances both within and outside Phase I jurisdictions.

Regardless of which option DCR chooses, any permit issued to VDOT must include provisions specific to its operations, including:

- Permit provisions which reflect the unique and distinct aspects of VDOT operations compared to traditional MS4 permittees;
- A requirement as to how localities and VDOT will plan, communicate and coordinate responsibilities (including funding, retrofit, and/or rebuilding projects) when county and VDOT systems are interconnected;
- An indication as to who is responsible (and thus liable for any violations) for reducing loads from areas draining to a VDOT stormwater conveyance system, given that VDOT owns and operates the system but the county has the authority to implement land use controls such as ordinances; and
- Permit provisions that are clear, equitable and enforceable, and that apply to the traditional MS4 as well as to VDOT (e.g., identify specific permit provisions that are applicable to one or more permittees or co-permittees) within the Phase I MS4.

As an aside, EPA notes that the issue of VDOT coverage did not arise during our agencies' discussions on the Arlington County Permit, given that Arlington County owns and operates the majority of roads within its borders. In contrast, VDOT owns and maintains the majority of roads in Prince William County.

If DCR prefers to resolve the objection to the Prince William MS4 permit without resolving the other Phase I VDOT coverage issues, EPA would also accept issuance of a separate individual permit for VDOT activities in Prince William MS4 (Option 1 above) or issuance of permit with VDOT "as a co-permittee with Prince William County" (Option 3).

2. Compliance with the Maximum Extent Practicable Standard

Municipal permittees are required to reduce the discharge of pollutants from their systems to the "maximum extent practicable" (MEP). See 33 U.S.C. § 1342(p)(B)(iii) ("Permits for discharges from municipal storm sewers...shall require controls to reduce the discharge of pollutants to the maximum extent practicable..."); see also 40 C.F.R. §122.34(a) ("Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.") Permitting authorities have the obligation to write permits with clear, enforceable and measurable provisions, and it is the responsibility of the permitting authority to develop appropriate requirements, including the determination of what

draft Prince William County permit because the fact sheet supporting the permit fails to evaluate whether the specific retrofit projects would be adequate and appropriate to require in order to satisfy the MEP standard.

In order to withdraw this portion of the objection, DCR must revise Part 1.B.2.(c) as follows:

"From the prioritized list of conceptual projects required in Part I.B.1, the permittee shall select at least seven conceptual projects for completion no later than 60 months after the effective date of this permit. The permittee shall submit a summary of the projects selected for implementation and proposed schedule and project status updates to the Department as part of the annual report. for the review and approval of the Department to ensure that the projects will reduce pollutants to the maximum extent practicable (MEP). The Department may request additional projects if the seven selected projects do not meet the MEP standard.

"The permittee shall submit a status of the selected projects and updated schedule for implementation to the Department with each annual report. The permittee may substitute alternative retrofit projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans and that the alternative projects are also reviewed and approved by the Department.

"The permittee shall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location by latitude and longitude in hours, minutes and seconds so that it is possible to calculate the pollutant reductions associated with the project."

Similarly, the fact sheet must be revised to state:

"Part I.B.2.c) Retrofitting on Prior Developed Lands: As required in Part I.B.1 of the permit, the permittee must identify and prioritize those conceptual projects related to stormwater water pollutant reduction in order to work toward reducing pollutants to the maximum extent practicable (MEP). Based on the prioritized list, the permittee will select seven of these projects for implementation prior to expiration of the permit. The Department will review, provide comments, and/or approve the proposed projects for implementation- to ensure that the projects will reduce pollutants to the MEP. The Department may request additional projects if the seven selected projects do not meet the MEP standard. After approval, the permittee will proceed with implementation of the projects such that they are completed prior to the expiration of the permit. In determining MEP, the Department will consider land use of area draining to proposed BMPs; pervious and impervious acreage; downstream receiving water and channel conditions; holistic benefits of retrofits, watershed improvement plans, and/or engineered structures; the estimated pollutant reductions; and cost of pollutant reductions. With each annual report, the permittee will provide a status update of those selected projects. The permit allows the permittee to substitute alternative projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans and that the alternative projects are also reviewed and approved by the Department. After approval, the permittee will proceed with implementation of the projects such that they are completed prior to the expiration of the permit. With each annual report, the permittee will provide a status update of those selected projects. For each project, the permittee

will provide a status update of those selected projects. For each project, the permittee will track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location so that it is possible to calculate the pollutant reductions associated with the project."

EPA recommends that DCR make the retrofit provisions within the draft Prince William County permit comparable to the draft Phase I MS4 permit for Arlington County submitted to EPA on January 22, 2013. EPA is pleased that DCR has expressed a willingness to make the changes, and we look forward to reviewing a revised draft permit and fact sheet with these changes prior to withdrawing our objection.

3. Proper Maintenance

All NPDES permittees, including MS4 operators, are required to properly operate and maintain all facilities and systems of treatment and control at all times. See 40 C.F.R. § 122.41(e). EPA objects to the draft permit because, as written, it lacks provisions to ensure proper maintenance of stormwater management facilities. In order to resolve this portion of the objection, DCR must revise Part I.B.2.b)(5) and Part 1.B.2.i)(2)(a)(1) of the draft permit to read, "Should the permittee choose a strategy other than a maintenance agreement, such a strategy shall be provided in writing no later than 12 months after the effective date of this permit and may shall include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long term maintenance of such facilities." EPA is pleased that DCR has expressed a willingness to make the changes, and we look forward to reviewing a revised draft permit and fact sheet with these changes prior to withdrawing our objection

4. Incorporation of Wasteload Allocations

Where the Commonwealth or EPA has established a Total Maximum Daily Load (TMDL) for an impaired water that includes wasteload allocations (WLAs) for stormwater discharges, permits must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 C.F.R. §§ 122.44(d)(1)(vii)(B); 40 C.F.R. 123.44(c)(8). EPA objects to the draft Prince William County permit because it does not identify all applicable TMDLs currently in effect by name in the permit, including the date of establishment/approval, the pollutants and the applicable WLA (or summary of DCR's determination of what is considered consistent effluent controls and/or BMPs with the respective WLA). As a result, the draft permit does not contain requirements that are consistent with such applicable TMDLs.

In order to resolve this portion of EPA's objection, the permit must identify all applicable TMLDs. EPA is pleased that DCR has committed to develop a table with the necessary information for inclusion in the permit, and we look forward to reviewing a revised draft permit with this addition prior to withdrawing our objection.

EPA looks forward to continuing to work cooperatively with DCR and DEQ to resolve the remaining issues in an expeditious manner. EPA is currently in discussions with DCR, on other possible options, in addition to the four cited above to address our concerns about MS4 permit coverage and VDOT. Until the issues are resolved, however, DCR may not issue the Prince William County MS4 permit without written authorization from EPA. See 40 C.F.R §122.4(c).

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

Jón M. Capacasa, Director Water Protection Division

cc: Ginny Snead, DCR Melanie Davenport, DEQ Marc Aveni, Prince William County



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

JUN 2 7 2013

Mr. Richard Weeks, Acting Director Division of Stormwater Management Virginia Department of Conservation and Recreation 900 East Main Street, 8th Floor Richmond, Virginia 23219

Re: Specific Objection to Chesterfield County Phase I Municipal Separate Storm Sewer System (MS4)
Permit VA0088609

Dear Mr. Weeks:

On March 29, 2013, the U. S. Environmental Protection Agency (EPA or the Agency), received a draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Chesterfield County permit). EPA has reviewed the permit pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between EPA Region III and the Virginia State Water Control Board (1975) (as well as subsequent agreements).

In April 2013, EPA informed the Virginia Department of Conservation and Recreation (DCR) and the Virginia Department of Environmental Quality (DEQ) that its concerns with the draft Phase I MS4 permit for Prince William County also applied to the draft Chesterfield County permit. On April 25, 2013, EPA issued a time extension letter to increase the Agency's review time to 90 days since we had reason to believe that the comments would not be addressed within the initial 30-day review period. EPA, DCR and DEQ are currently in discussions on these issues. While EPA, DCR and DEQ have agreed in principle on the resolution of several issues, one major issue remains -- clarification of the roles of Chesterfield County (the County) and the Virginia Department of Transportation (VDOT) in meeting the permit requirements. There are also secondary issues that still need to be resolved. Since these discussions are ongoing and the 90-day review period will expire on June 27, 2013, EPA is issuing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A.2 of the MOA. As further explained herein, EPA believes that the Chesterfield County permit fails to incorporate several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. (CWA), and its implementing regulations.

EPA's objection to the draft permit and identification of revisions that are needed before EPA can remove the objection, see 40 C.F.R. § 123.44(b)(2)(ii), are described below:

1. MS4 Permit Coverage

All discharges from MS4s located in identified large and medium MS4s jurisdictions are required to have permit coverage. See 40 C.F.R. § 122.26(a)(3)(i). The current draft permit is insufficient to authorize all discharges from the MS4 (or MS4s) serving the County, despite the requirement for coverage. The permit applies to "discharges to surface waters from the Municipal Separate Storm Sewer System (MS4) owned or operated by the Chesterfield County in Virginia" (as well as to four categories of separate or commingled discharges through the MS4). As written, however, the permit does not provide authorization for discharges of pollutants from the MS4 within Chesterfield County that are owned or operated by VDOT.

EPA believes this lack of NPDES permit coverage for VDOT in this draft permit is based on DCR and DEQ's assumption that VDOT's discharges will be covered under the state's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (small MS4 GP, or Phase II MS4 GP) (to be effective July 1, 2013). It is hard to conceive how MS4s located in the County – a Phase I jurisdiction – can receive coverage under the small MS4 GP; those systems do not meet the definition of a "small MS4" but are instead defined as "medium" or "large" MS4s. See 40 C.F.R. § 122.26(b)(4), (7), (8), (16)(ii). From a policy perspective, requiring Phase I MS4 coverage for all VDOT-owned stormwater conveyances within the County is expected to minimize confusion over conveyance ownership since the Phase I permit would cover all such conveyances in the MS4.

Given the need for permit coverage for VDOT's discharges within the County, the regulations provide several options for how those permits may be structured, including the issuance of "one system-wide permit covering all discharges from [MS4s] within a large or medium municipal storm sewer system" or by issuing "distinct permits for appropriate categories of discharges within a large or medium [MS4]." See 40 C.F.R. § 122.26(a)(3)(ii). To the extent that Virginia chooses to issue one permit for the discharges within the County, the Preamble to the EPA Phase I Rule for Stormwater Discharges supports this option: one purpose of the regulations is to resolve issues associated with MS4 dischargers not having the legal authority to implement land use controls (e.g., DOTs) or not having ownership of conveyances (e.g., localities in instances where DOTs own conveyances). See 55 Fed. Reg. 47990, 48041 (November 16, 1990).

Consequently, in order to resolve this portion of the objection for the Chesterfield County MS4 permit, as well as to avoid the need for future objections with regard to the remaining Phase I MS4 permits in Virginia, EPA has offered Virginia the following options for extending Phase I MS4 permit coverage to VDOT facilities and conveyances located within Phase I MS4 jurisdictions:

1. DCR or DEQ may issue VDOT 11 individual Phase I MS4 permits covering its activities, including the discharge of pollutants, within each traditional Phase I MS4 jurisdiction within the state;

¹ The Permit also applies to "Non-stormwater discharges and stormwater discharges associated with industrial activity (defined at 9 VAC 25-31-10) that are authorized by a separate Virginia Pollutant Discharge Elimination System (VPDES) permit; [d]ischarges from construction activities that are regulated under the Virginia Stormwater Management Program (VSMP) (4VAC 50-60-10 et. seq.) and authorized by a separate VSMP Permit; [certain types of] non-stormwater discharges unless the State Water Control Board or the Virginia Soil and Water Conservation Board determine the discharge to be a significant source of pollutants to surface waters; and discharge of material resulting from a spill [that] is necessary to prevent loss of life, personal injury, or severe property damage. . . . "

- 2. DCR or DEQ may issue VDOT one individual Phase I MS4 permit covering its systems for all areas of the Commonwealth statewide that are located within Phase I MS4 jurisdictions. Under this option, VDOT would still need Phase II permit coverage for stormwater conveyances that meet the definition of "small MS4" under 40 C.F.R. § 122.26(b)(16);
- 3. DCR or DEQ may add VDOT as a co-permittee to traditional Phase I MS4 permits, *i.e.*, together with the County. Under this option, VDOT would still need Phase II permit coverage for stormwater conveyances that meet the definition of "small MS4" under 40 C.F.R. § 122.26(b)(16); or
- 4. DCR or DEQ may issue one individual state-wide MS4 permit that covers all VDOT conveyances both within and outside Phase I jurisdictions.

Regardless of which option DCR or DEQ chooses, any permit issued to VDOT must include provisions specific to its operations, including:

- Permit provisions which reflect the unique and distinct aspects of VDOT operations in contrast to the activities of traditional MS4 permittees;
- Requirements for how localities and VDOT will plan, communicate and coordinate responsibilities (including funding, retrofit, and/or rebuilding projects) when County and VDOT systems are interconnected or when runoff from the County drains into the VDOT system;
- An indication as to who is responsible (and thus liable for any violations) for reducing loads
 from areas draining to a VDOT stormwater conveyance system, given that VDOT owns and
 operates the system but the County has the authority to implement land use controls such as
 ordinances; and
- Permit provisions that are clear, equitable and enforceable, and that apply to the traditional MS4 as well as to VDOT (e.g., identify specific permit provisions that are applicable to one or more permittees or co-permittees) within the Phase I MS4.

As an aside, EPA notes that while the issue of VDOT coverage arose in EPA's review of the draft Prince William County Permit, it did not arise during our agencies' discussions on the Arlington County Permit. This is because Arlington County owns and operates the majority of roads within its borders. In contrast, VDOT owns and maintains the majority of roads in Chesterfield and Prince William Counties.

If DCR or DEQ prefers to resolve the objection to the Chesterfield County MS4 permit without resolving the other Phase I VDOT coverage issues for all VDOT systems within Phase I localities, EPA would also accept issuance of a separate individual permit for VDOT activities within the Chesterfield County MS4 (Option 1 above) or issuance of a permit with VDOT as a co-permittee along with Chesterfield County (Option 3).

2. <u>Limitations on Stormwater Management Planning Provisions</u>

The draft permit for Chesterfield County is also problematic in that it does not include sufficient requirements for the County to perform planning. Part I.B.1 of the draft permit limits stormwater management planning activities to the evaluation of projects "within County easements, right-of-ways, and properties for implementation during the term of this permit." However, federal regulations call for, "a comprehensive planning process... to reduce the discharge of pollutants to the maximum extent

practicable" and do not limit projects to within County easements and right-of-ways. See 40 C.F.R. §122.26(d)(2)(iv).

In order to resolve this portion of the objection, DCR or DEQ must revise Part I.B.1 as follows, "No later than 12-months after the effective date of this permit, the permittee shall submit to the Department, a Storm Water Capital Improvement Plan including cost-benefit analyses for projects within the County that must be implemented within County easements, right-of-ways, and properties during the term of this permit."

3. Compliance with the Maximum Extent Practicable Standard

Municipal permittees are required to reduce the discharge of pollutants from their systems to the "maximum extent practicable" (MEP). See 33 U.S.C. § 1342(p)(B)(iii) ("Permits for discharges from municipal storm sewers... shall require controls to reduce the discharge of pollutants to the maximum extent practicable..."); see also 40 C.F.R. §122.34(a) ("Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.") Permitting authorities have the obligation to write permits with clear, enforceable and measurable provisions, and it is the responsibility of the permitting authority to develop appropriate requirements, including the determination of what requirements are necessary to achieve MEP. EPA hereby objects to Part 1.B.2(c) of the draft Chesterfield County MS4 permit because it fails to require the discharger to achieve the MEP standard for retrofit projects. Further, the fact sheet supporting the permit fails to evaluate whether the specific retrofit projects would be adequate and appropriate to satisfy the MEP standard.

In order to withdraw this portion of the objection, DCR must revise Part 1.B.2.(c) as follows:

"From the Storm Water Capital Improvement Plan required in Part I.B.1, the permittee shall select no less than fiveseven projects for completion no later than 60 months after the effective date of this permit. The permittee shall submit a summary of the projects selected for implementation and proposed schedule and project status updates to the Department as part of the annual report. for the review and approval of the Department to ensure that the projects will reduce pollutants to the maximum extent practicable (MEP). The Department may request additional projects if the seven selected projects do not meet the MEP standard.

"The permittee shall submit a status of the selected projects and updated schedule for implementation to the Department with each annual report. The permittee may substitute alternative retrofit projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans and that the alternative projects are also reviewed and approved by the Department.

"The permittee shall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location by latitude and longitude in hours, minutes and seconds so that it is possible to calculate the pollutant reductions associated with the project."

Similarly, the fact sheet must be revised to state:

"Part I.B.2.c) Retrofitting on Prior Developed Lands - 4VAC50-60-380 C.2.d(1)(d): As required in Part I.B.1 of the permit, the permittee must identify and prioritize Storm Water Capital Improvement projects related to pollutant reduction in order to work toward reducing pollutants to the maximum extent practicable (MEP). Based on the prioritized list, the permittee willshall select fiveseven of these projects for implementation prior to expiration of the permit. The Department will review, provide comments, and approve the proposed projects for implementation to ensure that the projects will reduce pollutants to the MEP. The Department may request additional projects if the seven selected projects do not meet the MEP standard. After approval, the permittee will proceed with implementation of the projects such that they are completed prior to the expiration of the permit. In determining MEP, the Department will consider land use of area draining to proposed BMPs; pervious and impervious acreage; downstream receiving water and channel conditions; holistic benefits of retrofits, watershed improvement plans, and/or engineered structures; the estimated pollutant reductions; and cost of pollutant reductions. With each annual report, the permittee will provide a status update of those selected projects. The permit allows the permittee to substitute alternative projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans and that the alternative projects are also reviewed and approved by the Department. After approval, the permittee willshall proceed with implementation of the projects such that they are completed prior to the expiration of the permit. With each annual report, the permittee willshall provide a status update of those selected projects. For each project, the permittee willshall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location so that it is possible to calculate the pollutant reductions associated with the project."

EPA recommends that DCR make the retrofit provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permit for Arlington County submitted to EPA on January 22, 2013. EPA is pleased that DCR has expressed a willingness to make the changes, and we look forward to reviewing a revised draft permit and fact sheet with these changes prior to withdrawing our objection.

4. Proper Maintenance

All NPDES permittees, including MS4 operators, are required to properly operate and maintain all facilities and systems of treatment and control at all times. See 40 C.F.R. § 122.41(e). EPA objects to the draft permit because, as written, it lacks provisions to ensure proper maintenance of stormwater management facilities.

In order to resolve this portion of the objection, DCR or DEQ must make the following changes. First, Virginia must revise Part I.B.2(b)(5) of the draft permit to read, "The permittee shall continue to require adequate long-term operation and <u>annual maintenance</u> of stormwater management facilities by the responsible party." This revision would make the maintenance provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

Second, DCR or DEQ must further revise Part I.B.2.b)(5) of the draft permit to read, "If recorded maintenance instruments are not required for these facilities, the permittee shall develop a written strategy to address their long-term operation and maintenance no later than 12-months after the effective date of this permit. Such a strategy may shall include periodic inspections, homeowner outreach and education, maintenance agreements or other methods targeted at promoting the long term maintenance of such facilities." EPA is pleased that DCR has expressed a willingness to make the changes, and we look forward to reviewing a revised draft permit and fact sheet with these changes prior to withdrawing our objection.

Third, Part I.B.2.i)1) must be revised to read, "For stormwater management (SWM) facilities and easements maintained by the permittee and residential properties where SWM, BMP and Storm Drainage Systems qualify for County maintenance (excluding apartments and mobile home parks), the following conditions apply..." This revision would make the maintenance provisions within the draft Chesterfield County MS4 permit comparable in scope to the draft Phase I MS4 permits for Arlington and Prince William Counties.

Fourth, in order to specify maintenance provisions for stormwater management facilities that are not maintained by the permittee, Part I.B.2.i)2)(a)(1) needs to be revised to include the following language, "Beginning with the effective date of this permit, maintenance agreements may be used but are not required for stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot on which they are located provided that the permittee has developed and implemented a strategy to address maintenance of such stormwater management controls. Should the permittee choose a strategy other than a maintenance agreement, such a strategy shall be provided in writing no later than 12 months after the effective date of this permit and shall include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long term maintenance of such facilities." This revision would make the maintenance provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties. Alternatively, the fact sheet could explain what other permit provisions apply to facilities not operated by the permittee and for which no maintenance agreements exist.

Finally, Part I.B.2.i) must be revised to include the following specific reporting requirements, "Each annual report shall include a list of activities including inspections performed and notifications of needed maintenance and repair of stormwater infrastructure not operated by the permittee." This revision would also make the maintenance provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

5. Minimizing Discharges from Roadways

Phase I MS4 permits must include a comprehensive plan to develop, implement and enforce controls to reduce discharges of pollutants to MS4s from areas of new development and significant redevelopment. See 40 C.F.R §122.26(d)(2)(iv)(A)(2). Further, Phase I MS4 permits must contain a description of practices for reducing the impact of MS4 discharges from public streets, roads and highways. See 40 C.F.R §122.26(d)(2)(iv)(A)(3). The draft permit does not include adequate provisions to address discharges from new roadways, which are a category of new development. In order to resolve this portion of the objection, Part I.B.2.d) must be revised to include, "Prior to approval of any

secondary road design, the permittee shall require that approved source controls have been installed to minimize discharge of pollutants from the roadways and that applicable long term maintenance agreements have been implemented." This addition would make the roadways provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

6. Outreach to Golf Courses

Phase I MS4 permits must include a description of programs to reduce pollutants in discharges from MS4s associated with fertilizers and pesticides. These programs will include educational activities, as appropriate. See 40 C.F.R §122.26(d)(2)(iv)(A)(6). The draft permit does not include adequate provisions to address fertilizer and pesticide runoff from public and private golf courses. In order to resolve this portion of the objection, Part I.B.2.k)(c) must be revised as follows: "Evaluate the development of Develop an outreach program with public and private courses golf courses located within the county that would implement integrated management practice (IMP) plans and techniques to reduce runoff of fertilizer and pesticides." This revision would make the education provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

7. Clarification of Director and Authorized Representative

Federal regulations governing the NPDES programs specify that the Director means the the State Director of an approved program or an authorized representative. See 40 C.F.R §122.2. Given that the NPDES program governing MS4 discharges is transitioning from DCR to DEQ, the permit must be updated to reflect the appropriate Department and Board in order to resolve this portion of the objection.

EPA looks forward to continuing to work cooperatively with DCR and DEQ to resolve the remaining issues in an expeditious manner. EPA is currently in discussions with DCR and DEQ on other possible options to address our concerns about MS4 permit coverage and VDOT, in addition to the four choices identified above. Until the issues are resolved, however, neither DCR nor DEQ may issue the Chesterfield County MS4 permit without written authorization from EPA. See 40 C.F.R. §122.4(c).

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely.

Jon M. Capacasa, Director

Water Protection Division

cc: Ginny Snead, DCR
Melanie Davenport, DEQ

Scott Smedley, Chesterfield County



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

<u>CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u>

MAR 2 8 2013

Mr. Kevin S. Boggess Town of Vinton 311 South Pollard Street Vinton, VA 24179

Re: Docket No. CWA-03-2013-0072DN

Administrative Order for Compliance and Request for Information

Dear Mr. Boggess:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the Town of Vinton submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the Town: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the Town of Vinton has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director

Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR

Jerome Brooks, VA DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

Town of Vinton
311 South Pollard Street
Vinton, VA 24179

Docket No. CWA-03-2013-0072DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- 6) On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
 - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water..."40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . . " 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- Town of Vinton, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Roanoke County, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Glade Creek/Tinker Creek (RU13), Wolf Creek (RU14), Roanoke River and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Glade Creek/Tinker Creek (RU13), Wolf Creek (RU14), Roanoke River and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 3: Illicit Discharge Detection and Elimination

- Section II.B.3.c of the Permit requires the Respondent to "to the extent allowable under state, tribal, or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions."
- 28) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified

- best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Establish a program to detect and eliminate illicit discharges in the Town's storm sewer system by developing and adopting ordinances and regulations, and an enforcement program to minimize illicit discharges and prevent illegal discharges into the storm drain system."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 3: Illicit Discharge Detection and Elimination

- 31) Section II.B.3.d of the Permit requires the Respondent to "develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Develop, implement, and enforce a program to detect and eliminate illicit discharges in the Town's storm sewer system. The Illicit Discharge Program will include the following components: 1)

 Procedures for locating priority areas likely to have illicit discharges; 2) Procedures for tracing source of an illicit discharge; 3) Procedures for removing the source of the discharge; 4) Procedures for program evaluation and assessment; and 5) Procedures for reporting discharges into the Town's storm sewer system."
- 34) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 3: MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

35) Section II.B.6 of the Permit requires the Respondent to "develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes

- a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 37) Respondents MS4 Program Plan requires that the Respondent: "Develop and maintain pollution prevention and hazardous waste training programs for Town employees, grounds maintenance workers, and landscaping crews."
- 38) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. <u>CONCLUSIONS</u> OF LAW

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this ______ day of _______, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 41) Within thirty (30) days of the effective date of this Order, Respondent shall:
 - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or

b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE
DCR Division of Stormwater Management
Office of Regulatory Programs Manager
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. EFFECTIVE DATE

47) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date:	MAR 2 8 2013	(Amm. Japan
		Jon M. Capacasa, Director
		Water Protection Division
	•	U.S. EPA, Region III

CITY OF VIRGINIA BEACH MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM INSPECTION REPORT

January 2013

Office of Compliance and Enforcement U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, D.C. 20460

U.S. Environmental Protection Agency, Region III
Water Protection Division
NPDES Enforcement Branch (3WP42)
1650 Arch Street
Philadelphia, PA 19103

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EXECUTIVE SUMMARY

From June 6 through 7, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of the City of Virginia Beach, Virginia (Virginia Beach or City)

The purpose of this inspection was to obtain information that will assist EPA in assessing Virginia Beach's compliance with the requirements of its Virginia Pollution Discharge Elimination System Permit Number VA0088676, as well as the implementation status of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning Virginia Beach's MS4 program related to the specific permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

Table 1. Summary of Permit Requirements and Inspection Observations

Observations					
Part I.A.1.b. Illicit Discharge Detection and Elimination	Observation 1: Priority is not being given to segments of the system which may receive drainage from industrial and commercial sources. Observation 2: The City is not following up on suspected illicit discharges discovered during dry weather screening. Observation 3: Virginia Beach has not implemented a program to target specific areas with outreach materials after an illicit discharge is suspected.				
Part I.A.1.c. Industrial and Commercial Facilities	Observation 4: Virginia Beach is not controlling pollutants from industrial facilities owned and operated by the city. Observation 5: The City is not using the information available to monitor and control pollutants from industrial and commercial facilities. Observation 6: The City is not conducting inspections of industrial/commercial facilities because of the Dillon Rule in Virginia, which denies an entity such as the city the authority to enter private property for stormwater inspections.				
Part I.A.1.d. Construction Sites	Observation 7: The City is not maintaining, inspecting and repairing erosion and sediment control structures and systems as needed to insure the continued performance of their intended function.				

TABLE OF CONTENTS

		Page
INTRODUCTI	ON	1
VIRGINIA BE.	ACH BACKGROUND	2
INFORMATIO	ON OBTAINED RELATIVE TO PERMIT REQUIREMENTS	3
]	Part I.A. Storm Water Management Program	3
]	Part I.A.1.b. Illicit Discharge Detection and Elimination	3
]	Part I.A.1.c. Industrial and Commercial Facilities	4
]	Part I.A.1.d. Construction Sites	5
Appendix 1:	Virginia Beach's Permit (VPDES Permit VA0088676)	
Appendix 2:	Inspection Schedule	
Appendix 3:	Sign-In Sheets	
Appendix 4:	Exhibit Log and Exhibits	
Appendix 5:	Photographs	
Appendix 6:	Document Log (Documents on Compact Disc)	
Appendix 7:	Compliance Assistance and/or Suggestions for Program Improve	ment

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INTRODUCTION

From June 6 through 7, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of the city of Virginia Beach, Virginia (Virginia Beach). Discharges from the city's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088676 (the Permit), which is included in Appendix 1.

The purpose of this inspection was to obtain information that will assist EPA in assessing Virginia Beach's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Appendix 2.

The EPA Inspection Team obtained its information through a series of interviews with representatives from Virginia Beach, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

Virginia Beach: **Department of Public Works**

Mr. Bill Johnston, VPDES Permit Administrator

Mr. Phil Davenport, Interim Director

Mr. Clay Bernick, Administrator, Environment and Sustainability Office

Mr. John Fowler, City Engineer

Mr. Brad Hobbs, Engineer IV

Mr. Frank Janes, Construction Inspector Supervisor

Mr. David Jarman, Transportation Division Project Management Supervisor

Mr. Mark A. Johnson, Infrastructure Maintenance Administrator

Mr. Phillip Koetter, Operations Management Administrator

Mr. Steve McLaughlin, Stormwater Project Manager

Mr. Phill Roehrs, Water Resources Engineer

Mr. Steve Uperti, Superintendent of Waste Disposal

Mr. Bobby Wheeler, Engineering Service Administrator

Mr. Jim Yost, Fleet Management Operations Coordinator

Mr. Adam Walborn, Inspector

Fire Marshal's Office

Mr. David Beatty, Assistant Fire Marshal

Mr. Tim Scott, Deputy Fire Marshal

Department of Planning & Community Development

Ms. Cheri Hainer, Permits & Inspections (P&I) Administrator

Mr. Charles Hassan, Development Services Coordinator

Mr. Charlie Heffington, Civil Engineer

Mr. Mike Lannon, P&I, Construction Inspector

Mr. Charles Mason, P&I, Construction Inspector

Mr. Tony Tolentino, Senior Project Coordinator

Mr. Robert Williams, P&I, Civil Supervisor

Department of Public Utilities

Mr. Nick Nagurney, Project Manager

Mr. Rich Nettleton, Design and Construction Manager

URS Corporation: Mr. Mike Barbachem

SCS Engineers: Mr. Keith Matteson, Project Manager

EPA Mr. Chuck Schadel, Enforcement Officer Representatives: Ms. Kyle Zieba, Enforcement Officer

Ms. Kaitlyn Bendik, Life Scientist

Virginia DCR Mr. Mason Harper, MS4 Permit Writer

Representatives: Mr. Noah Hill

Mr. Ved P. Malhotra, Stormwater Compliance Engineer

EPA Contractors: Mr. Mark Briggs, ERG

Ms. Kavya Kasturi, ERG Ms. Lauren Scott, ERG

For a complete list of all inspection participants, please refer to the sign-in sheets in Appendix 3.

During the inspection, the EPA Inspection Team obtained documentation regarding compliance with the Permit. Pertinent information may have been obtained prior, and/or after meeting with Virginia Beach staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation is provided in Appendix 4 and photographs taken during the inspection are provided in Appendix 5. A complete list of documents obtained is provided as a Document Log in Appendix 6.

The report identifies Permit requirements with specific sections cited and observations made during the inspection. The format of the report follows the numeric system used in the Permit and is sequential. Sections of the permit are restated with observations about those requirements listed below.

Additionally, Appendix 7 provides compliance assistance and/or suggestions for program improvement.

VIRGINIA BEACH BACKGROUND

Virginia Beach has been developing and implementing its MS4 Program since 1996. Virginia Beach's coverage under the VPDES permit program became effective on March 8, 2001 with an expiration date of March 8, 2006. In 2005, Virginia Beach submitted a reapplication for its MS4 permit. Since DCR has not issued a new permit, by default, the Permit has been administratively continued.

Virginia Beach encompasses over 300 square miles of land, and is bordered on the west by the Cities of Norfolk and Chesapeake, on the north by the Chesapeake Bay, on the east by the Atlantic Ocean, and on the south by the State of North Carolina. The total population of Virginia Beach is estimated to be 433,228 in 2009, and the population of its Metropolitan Statistical Area

(MSA) is over 1,650,000. The MS4 discharges into the following receiving waters: Chesapeake Bay, Little Creek, Lynnhaven River, Broad Bay, Eastern Branch of the Elizabeth River, North Landing River Back Bay, Rudee Inlet, and the Atlantic Ocean. The city has subdivided its watersheds into 31 subwatersheds.

Currently the city has 46 engineers and 29 inspectors to implement the MS4 program. Based on the city of Virginia Beach's website, Virginia Beach charges a stormwater fee of 0.316 cents per day or \$115.34 per year per equivalent residential unit (ERU) to finance the MS4 program, which provides approximately \$9.4 million annually in revenue for the program. The city had a budget of \$25,201,281 for the 2010-2011 fiscal year. The city has a budget of \$29,872,023 for the 2011-2012 fiscal year.

INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS

Dry weather conditions were experienced throughout most of the inspection activities. Weather history reports indicated that there was no precipitation in the city during the field work component of the inspection activities. In addition, the weather history reports indicated approximately 0.35 inches of precipitation had fallen within the three days prior to the inspection and no rain had fallen in the three days following the inspection.

Part I.A. Storm Water Management Program

Part I.A.1.b. Illicit Discharge Detection and Elimination – The Storm Water Management Program shall contain a program to detect and remove, or to notify a discharger to apply for a separate VPDES permit for, unauthorized non-stormwater discharges and/or improper disposal into the MS4. Priority shall be placed on segments of the storm sewer system which receives drainage from industrial and commercial sources. Where necessary, the permittee shall conduct onsite investigation of potential sources of unauthorized non-stormwater discharges. The permittee shall act as expeditiously as possible to require a discharger to eliminate unauthorized stormwater discharges. The permittee shall implement a program to promote, publicize, and facilitate public reporting of the presence of unauthorized non-stormwater discharge or water quality impacts associated with discharges from the MS4.

Observation 1:

Priority is not being given to segments of the sewer system which receive drainage from industrial and commercial sources. A review of the URS dry weather field screening reports for 2011 found that 15 of the 25 outfalls screened (60 percent) had a watershed land use classification of residential. In 2010, 18 of the 25 outfalls (72 percent) screened by URS had a watershed land use classification of residential.

Observation 2:

The city is not investigating suspected non-stormwater discharges discovered during dry weather screening. For example, dry weather screening results for Sample Site #29 from October 2010 and January 2011 noted the presence of heavy floatables, discoloration, slight fuel smell, and ammonia concentrations above action levels (see Exhibit 1). Field sheets generated by URS note that the city was alerted four separate times by URS about the potential illicit discharge; however, no documentation exists in the city's Hansen tracking system to determine if

any investigation was conducted. Documentation was requested (see item 6 in Exhibit 2); however, no documentation was received. During the EPA Inspection Team's inspection on June 7, 2012, a dry weather flow was again noted, estimated to be between 30 and 50 gpm, (see Photograph 1), and URS again measured ammonia above action levels, plus total phosphorous at approximately 200 mg/L.

Observation 3:

Virginia Beach has not implemented a public reporting program when the presence of an unauthorized non-stormwater discharge is found. For example, dry weather screening at Sample Site #29 from October 2010 and January 2011 indicated the presence of floatables, discoloration, slight fuel smell and ammonia concentrations above action levels; however, the city did not provide documentation that it facilitated the public reporting of the non-stormwater discharges to residents and local businesses.

Part I.A.1.c. Industrial and Commercial Facilities – The Storm Water Management Program shall contain a program to monitor and control pollutants from municipal landfills, hazardous waste treatment facilities, storage and disposal facilities, industrial facilities (subject to Section 313 of EPCRA), and facilities "determined by the permittee to be contributing substantial pollutant loadings" to the storm sewer system. The permittee shall inspect any new or previously unidentified facilities and may establish and implement control measures as necessary/appropriate for stormwater discharges from these facilities. The permittee may monitor, or require the facility to monitor, stormwater discharge associated with industrial activity to the MS4.

Observation 4:

Virginia Beach is not monitoring and controlling pollutants from industrial facilities owned and operated by the city. For example, there are no records of stormwater inspections at the City Garage, even though the VPDES permit administrator for Virginia Beach stated this facility is the largest industrial facility within the MS4. During the EPA Inspection Team's visit to the City Garage on June 6, 2012, the following stormwater-related issues were identified:

- The silt fence placed near the ongoing construction area needed attention to fix holes, an additional check dam was needed in the constructed ditch to remove additional sediment, and exposed soils needed stabilization to prevent further erosion;
- Oil-stained soils were present near the perimeter fence; and,
- Grounds maintenance equipment was stored on hard packed gravel surfaces with a gasoline cap removed, which could result in a potential fuel spill that could enter the storm sewer.

Observation 5:

The City is not monitoring and controlling pollutants from industrial and commercial facilities throughout the MS4 area. For example, the Virginia Beach Fire Marshal's office has a listing of facilities they inspect and information on the types of materials stored at the facility. According to the VPDES permit administrator for Virginia Beach, this information is

not being used by the stormwater management program to target facilities that may be sources of substantial pollutant loading to the storm sewer system. In addition, "hot spot" data collected by the Department of Public Works regarding sanitary sewer overflows (SSOs) is not used by employees in the stormwater management program. Public Works managers stated that SSOs resulting from grease in the sanitary system are tracked, but the information is not used by the stormwater management program staff to target commercial/industrial inspections.

Observation 6:

The City is not conducting inspections of industrial/commercial facilities. According to Bill Johnston inspections of industrial/commercial facilities have not been conducted because of the Dillon Rule in the Commonwealth of Virginia. According to Mr. Johnston, the Dillon Rule denies the City access to private property for stormwater inspections. The City currently relies on the Fire Marshal's Office to identify potential stormwater-related issues during their routine inspections. The Fire Marshal's Office focuses their inspections on fire-related issues, which is their primary function. The EPA Inspection Team shadowed the Fire Marshal during his inspection of D&H Auto, an automobile repair shop, and Taylor Transmissions both located at 500 Newtown Road. The Fire Marshal's report states the facility should cleanup oil waste and keep floors clean (see Exhibit 3). However, the Fire Marshall's Office is not conducting stormwater inspections. For example, during EPA's inspection, the Fire Marshal did not address the outdoor power washing of heavy industrial equipment occurring on a gravel surface at the facility (see Photograph 2). Some of the other issues noted by the EPA Inspection Team at the 500 Newtown Road locations and not included in the Fire Marshal's report include:

- A trash bag containing oil filters was outside the building and leaking, creating a pool of fresh oil below a roof drain;
- A fresh spill of transmission fluid was observed on a concrete ramp outside the building;
- Drums lay on their side in grassed areas; and,
- Open barrels containing oily parts were observed outside on grassed areas.

Although the Fire Marshal stopped an active outdoor spray painting operation while on site, the number of obvious potential stormwater pollution issues indicate the Fire Marshal is focusing his/her efforts on fire safety rather than stormwater-related issues as indicated by the Fire Marshal's inspection report form (see Exhibit 3).

Part I.A.1.d. Construction Sites – The Storm Water Management Program shall contain a program to continue structural and nonstructural best management practices to reduce pollutants that are discharged through the MS4 in storm water runoff from construction sites. The permittee shall operate in accordance with, and continue enforcement of the requirements of the Site Plan

Ordinance, Erosion & Sediment Control Code, the Stormwater Management Ordinance, the Chesapeake Bay Preservation Area Ordinance, and the Southern Watershed Management Ordinance for land disturbing activities. The Erosion & Sediment Control Code includes Section 4VAC50-30-60 of the Virginia Administrative Code, which requires that all erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function.

Observation 7:

The City is not maintaining, inspecting and repairing erosion and sediment control structures and systems as needed to insure the continued performance of their intended function at construction sites. During the EPA Inspection Team's visit to the Princess Anne Road-Witchduck Road public road improvement site on June 7, 2012, city staff explained that a portion of a stream had been temporarily diverted to allow a bridge to be constructed. While hydroseed had been applied to the banks, no grass had begun to grow and no interim stabilization (e.g., matting) was observed on the steep banks created when the stream was diverted, potentially allowing for erosion of the banks to enter directly into the stream (see Photographs 3 and 4). Additionally, the EPA Inspection Team noted that while a new dewatering bag had been connected, the old, full dewatering bag had not been removed and a trail of sediment led from near the bags back toward a waterway (see Photographs 5 through 7). Inlet protection had not been maintained along a stretch of new road that was under construction. A small pile of cement was located near one inlet and a trail of cement and mud led from the pile to the inlet (see Photographs 8 through 10). City staff indicated that not all inlets had been tied into the MS4 as of the inspection and that the inlets would be cleaned prior to being tied into the system.

During the EPA Inspection Team's walk-through of the active construction area at the City Garage located at 2633 Leroy Road, the onsite construction contractor stated the original soil erosion and sediment control design for the site was causing flooding during rain events and therefore stormwater was diverted to a shallow trench with a small check dam and silt fence at the down-slope end (see Photograph 11). Although the trench, check dam, and silt fence were providing some sediment capture, sediment was observed beyond the silt fence. In addition, the approved changes to the sediment control plan to prevent flooding of the area were not available for review during the inspection and it was unclear if the installed BMPs were appropriately designed to handle all the stormwater flow from the drainage area prone to flooding.

City staff indicated that different departments within the city are responsible for E&S inspections during different stages of the construction project. For example, for a subdivision project, the Civil Inspections group is responsible for E&S inspections of the entire site after site plan approval, while the Building Inspections group is responsible for E&S inspections on individual lots once construction of single family homes

begins. The EPA Inspection Team requested documentation illustrating the process for transitioning E&S inspections from the Civil Inspections group to the Building Inspections group, including inspection procedure flow charts and delineated construction site stormwater responsibilities for each inspector group (see item 14 in Exhibit 2). Virginia Beach provided job descriptions; however, the descriptions did not identify for which segment in the construction sequencing each inspector was responsible and how inspections were transferred between groups. The job descriptions indicated that the Construction Inspector III position is responsible for coordinating construction site inspections throughout the life of the project (see Exhibit 4).

On June 7, 2012, the EPA inspection team visited the Village Bend subdivision construction site along with an inspector from Civil Inspections. Houses had been constructed or were under construction on a portion of the site, while construction had stopped on the majority of the site. The team first walked the dormant portion of the site, inspected by Civil Inspections. City staff stated the city inspector from Civil Inspection visited the site regularly; however, the EPA Inspection Team noted a number of issues on the site, including the following:

- The majority of the dormant sections of the site had not been stabilized (see Photographs 12 and 13);
- Inlet protection had not been maintained. Dirt and debris were located in the inlets (see Photographs 14 through 16);
- Sections of silt fence were down. Sediment was located outside the silt fence (see Photographs 17 through 20);
- Large tracts of water had collected on site, primarily in areas that had been prepared for road construction (see Photograph 21);
- Stockpiles of dirt had not been stabilized. Rill erosion was present on the stockpiles and sediment had spread off of the stockpiles (see Photographs 22 and 23); and,
- A stream near the back of the property had been diverted into a pipe which led to the on-site wet pond (see Photographs 24 through 26).
 City personnel indicated the stream may be a farm ditch and were unaware whether permits had been obtained for diverting the stream.

The team then walked the portion of the site where houses had been constructed or were under construction. The inspector stated that the Building Inspections department was responsible for E&S inspections for this portion of the site. The EPA Inspection Team identified the following issues:

 Most of the area had not yet been stabilized. In some areas, grass had been planted but was covered by a layer of dried sediment. Upon removal of a small piece of dried sediment, grass could be seen growing underneath the sediment. Flow paths of water from roof

- drains toward the back of the lots could be seen in the sediment (see Photographs 27 and 28);
- The limits of construction extended into the area marked by pink wetland delineation stake flags. An area behind the stake (in the wetland) had been cleared and silt fence had been placed at the edge of the cleared area. A stream was located behind the silt fence (see Photograph 29);
- Large lengths of silt fence were either down, compromised, or missing. Sediment was present beyond the silt fence limits. The stream behind the silt fence was turbid (see Photographs 30 through 34);
- A large pile of dirt was located along the banks of the stream (see Photographs 33 and 35);
- Good housekeeping practices had not been employed on site. Debris was strewn about the site. A white substance (potentially paint) was seen flowing from the area near the side of a house toward the stream in the back of the lot. The white substance had not yet reached the stream (see Photographs 36 and 37); and,
- Inlet protection was either compromised or missing (see Photographs 38 through 40).

The city has the ability to use stop work orders and utilize the funds provided by the developer in the form of bonds to undertake corrective actions to repair erosion and sediment control structures. However, city staff stated they had not used these tools to address chronic noncompliance and could not identify any site where bond funds were used. The EPA Inspection Team requested an example of a site where a bond was used and supporting documentation (see item 11 in Exhibit 2). The example provided showed that a bond had been used when the construction site requested the bond to be released at the completion of the project. In 2007, city staff identified that the on-site best management practice (BMP) had not been installed and documentation showed that the bond would not be released until work had been completed. The bond was used in 2011 to complete the work (see Exhibit 5).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

<u>CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u>

MAR 2 8 2013

Mr. David Shepard College of William and Mary P.O. Box 8795 Williamsburg, VA 23187

Re: Docket No. CWA-03-2013-0075DN

Administrative Order for Compliance and Request for Information

Dear Mr. Shepard:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the College of William and Mary submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the College: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the College of William and Mary has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR

Jerome Brooks, VA DEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

College of William and Mary 115 Grigsby Drive P.O. Box 8795 Williamsburg, VA 23187 Docket No. CWA-03-2013-0075DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.

- In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.
- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:

- a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and
- b) "Designed or used for collecting or conveying storm water. . "40 C.F.R. § 122.26(b)(8)(i).
- 13) A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new

- development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.
- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) College of William and Mary ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Williamsburg, Virginia.
- Respondent's small MS4 discharged storm water into the James River Lower (JL33), College Creek Lower (JL34), Powhatan Creek (JL31), Queen Creek (YO67) and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the James River Lower (JL33), College Creek Lower (JL34), Powhatan Creek (JL31), Queen Creek (YO67) and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 1: Public Education and Outreach

27) Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent

- outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 29) Respondents MS4 Program Plan requires that the Respondent: "Provide education of stormwater impact through presentations of research on Lake Matoaka and the surrounding watershed by the W.M. Keck Environmental Field Laboratory faculty. Two public presentations as scheduled to be made annually."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 3: Illicit Discharge Detection and Elimination

- Section II.B.3.b of the Permit requires the Respondent to "develop, if not already completed, and maintain, an updated storm sewer system map, showing the location of all known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, the associated surface waters and HUCs, and the names and locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Map existing campus storm water system, identifying major outfalls and receiving waters. Update college storm sewer map to reflect current knowledge of storm water drainage system and incorporating new construction. The map shall include any downstream regulated MS4 which are interconnected the college's MS4. A copy of the completed map and written notice shall be sent to the operator of all established regulated MS4s which are interconnected."
- 34) Based on EPA's 2011 File Review Respondent either:

- a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
- b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 3: MCM 4: Construction Site Stormwater Runoff Control

- Section II.B.4.a.(4) of the Permit requires the Respondent to develop and implement "procedures for the receipt and consideration of information submitted by the public."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "Public (including student, staff, and faculty at the College) can provide valuable information concerning storm water runoff and issues related thereto. CWM FM will develop internal procedures to insure that all public comments are reviewed by the CWM project manager and supervisor. Public comments are also part of the EIR process for construction projects exceeding \$500,000 in value."
- 38) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 4: MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

- 39) Section II.B.6 of the Permit requires the Respondent to "develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations."
- 40) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "Storm water runoff from snow and ice removal operations have a distinct impact on runoff quality. CWM will consult with VDOT to gain information on reducing snow and ice removal chemical usage while protecting public safety. Sand will be used in conjunction with an ice melt preparation

(magnesium chloride) to reduce the amount of chemical applied during snow/ice removal operations. Every opportunity will be taken to reduce the amount of chemical by applying it at the correct time."

- 42) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. <u>CONCLUSIONS OF LAW</u>

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this ______ day of _______, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 45) Within thirty (30) days of the effective date of this Order, Respondent shall:
 - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or

b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

IX. OPPORTUNITY TO CONFER

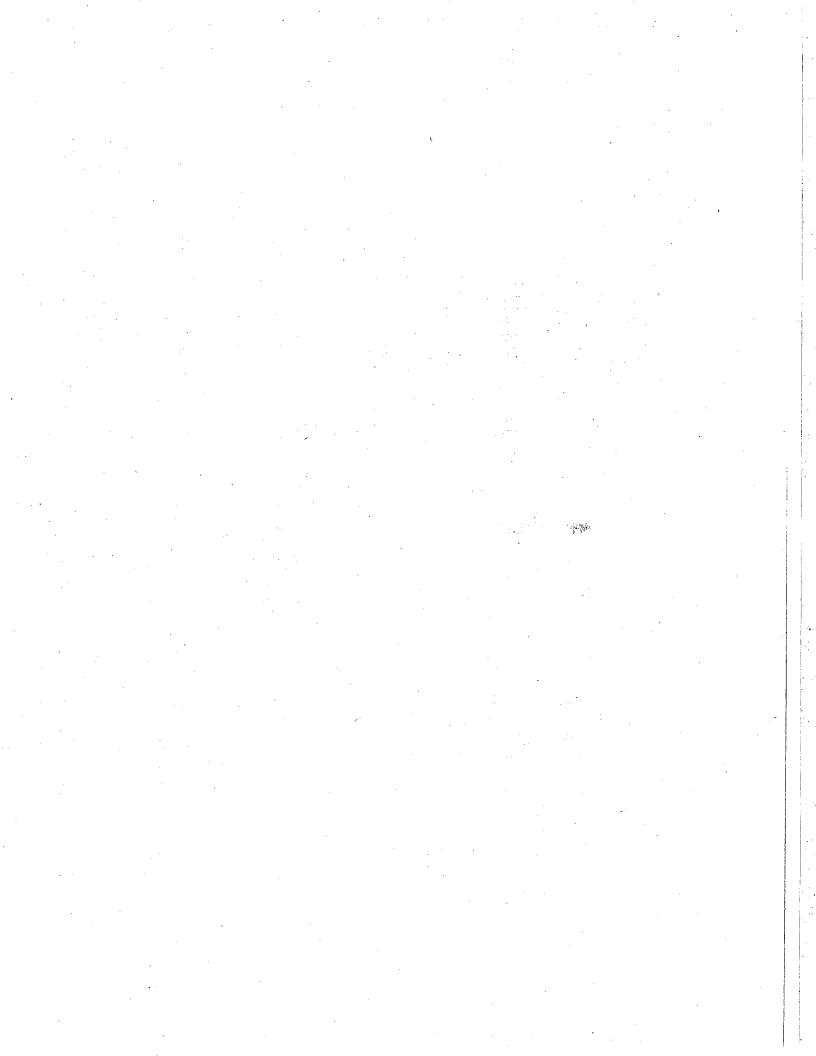
Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. <u>EFFECTIVE DATE</u>

This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 2 8 2013

Join M. Capacasa, Director Water Protection Division U.S. EPA, Region III





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

<u>CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u>

MAR 2 8 2013

Mr. Aaron Small, PE City of Williamsburg 401 Lafayette Street Williamsburg, VA 23185

Re: Docket No. CWA-03-2013-0073DN

Administrative Order for Compliance and Request for Information

Dear Mr. Small,

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Williamsburg submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Williamsburg has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

Ginny Snead, VADCR Jerome Brooks, VA DEQ cc:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

City of Williamsburg 401 Lafayette Street Williamsburg, VA 23185 Docket No. CWA-03-2013-0073DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
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 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements... section 1342... he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
 - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water. . . "40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. .
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Williamsburg, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Williamsburg, Virginia.
- Respondent's small MS4 discharged storm water into the Chisel Run-Powhatan Creek/James River, College Creek/Papermill Creek/Tutters Creek-College Creek/James River, Waller Mill/Queen's Creek- Queen's Creek/York River and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Chisel Run-Powhatan Creek/James River, College Creek/Papermill Creek/Tutters Creek-College Creek/James River, Waller Mill/Queen's Creek- Queen's Creek/York River and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. <u>VIO</u>LATIONS

Count 1: MCM 1: Public Education and Outreach

27) Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."

- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Encourage involvement in local water quality improvement initiatives. Post volunteer opportunities on local website. Submit articles for HR Green regional e-newsletter for public participation in water quality initiatives. Post volunteer opportunities through HR STORM and/or HR Green."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 3: Illicit Discharge Detection and Elimination

- Section II.B.3.c of the Permit requires the Respondent to "to the extent allowable under state, tribal, or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions."
- 32) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that the Respondent: "Continue implementing and enforcing the illicit discharge/stormwater ordinance."
- 34) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 3: MCM 5: Post-Construction Stormwater Management

Section II.B.5.b.(1) of the Permit requires the Respondent to "develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the operator's community. Where

determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology."

- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 37) Respondents MS4 Program Plan requires that the Respondent: "Encourage the use of LID as appropriate to local/regional conditions. Develop fact sheet/checklist to help developers and local staff determine appropriateness of LID for project(s)."
- 38) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. <u>CONCLUSIONS OF LAW</u>

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this ______ day of _______, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 41) Within thirty (30) days of the effective date of this Order, Respondent shall:
 - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or

b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. **EFFECTIVE DATE**

This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 2 8 2013

Jon M. Capacasa, Director Water Protection Division U.S. EPA, Region III